

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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TIME: 9:38 a.m.
DATE: Thursday, September 28, 2000
PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative of B. TIMOTHY GAGE, Director
State Department of Finance

BRUCE ROBECK
Representative for KATHLEEN CONNELL
State Controller

HEATHER A. HALSEY
Representative of LORETTA LYNCH
Director, Office of Planning and Research

JOHN S. LAZAR
City Council Member
Turlock City Council

WILLIAM SHERWOOD, Vice Chair
Representative of PHILIP ANGELIDES
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

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COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAT HART-JORGENSEN, Chief Counsel

SEAN AVALOS, Staff Counsel

TOM DEMPSEY, Staff Member

KATHY LYNCH, Staff Counsel

PIPER RODRIAN, Staff Services Analyst

DAVID SCRIBNER, Staff Counsel

JULIE SHELTON, Staff Services Analyst

CAMILLE SHELTON, Staff Counsel

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 2:

On Behalf of Los Angeles Police Department:

PAMELA STONE, Legal Counsel
DMG Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

On Behalf of Los Angeles Police Department:

STEVE JOHNSON
Assistant Laboratory Director
Los Angeles Police Department
Scientific Investigation Division
555 Ramirez Street, Space 270
Los Angeles, CA 90012

NORMAN LEE, Detective
Los Angeles Police Department
Narcotics Group
6240 Sylmar Avenue, Room 302
Van Nuys, CA 91401

ALLAN P. BURDICK
Vice President
DMG Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

**On Behalf of California State Association of Counties
and Los Angeles Police Department:**

ALLAN P. BURDICK
DMG Maximus

On Behalf of the California Department of Finance:

Cedrik Zemitis
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

A P P E A R A N C E S

Appearing Re Item 3:

On Behalf of the County of Los Angeles:

LEONARD KAYE
Certified Public Accountant
Office of Auditor-Controller
County of Los Angeles
603 Hall of Administration
Los Angeles, CA 90012

On Behalf of Los Angeles Police Department:

STEVE JOHNSON
Assistant Laboratory Director
Los Angeles Police Department
Scientific Investigation Division

On Behalf of California State Association of Counties:

ALLAN P. BURDICK
DMG Maximus

On Behalf of the California Department of Finance:

JAMES A. FOREMAN
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

TOM LUTZENBERGER
Department of Finance

Appearing Re Item 4:

On Behalf of the City of Palos Verdes Estates:

JAMES B HENDRICKSON
City Manager
City of Palos Verdes Estates
340 Palos Verdes Drive West
Palos Verdes Estate, CA 90274

PAMELA STONE, Legal Counsel
DMG Maximus

A P P E A R A N C E S

Appearing Re Item 4: continued

**On Behalf of City of Palos Verdes Estates and the
California State Association of Counties:**

ALLAN P. BURDICK
DMG Maximus

On Behalf of the California Department of Finance:

KENNETH POGUE
Deputy Attorney General
Department of Justice
1300 I Street
Sacramento, CA 95814

On Behalf of the California Department of Finance:

JOHN HIBER
Department of Finance
915 L Street
Sacramento, CA 95814

Appearing Re Item 5 and Item 6:

On Behalf of Alameda County Office of Education:

KEITH B. PETERSEN
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

On Behalf of the California Department of Finance:

LESLIE R. LOPEZ
Deputy Attorney General
Department of Justice

DAN TROY
Finance Budget Analyst
Department of Finance

Appearing Re Item 14:

On Behalf of the County of Los Angeles:

LEONARD KAYE
Certified Public Accountant
Office of Auditor-Controller
County of Los Angeles

A P P E A R A N C E S

Appearing Re Item 14: continued

On Behalf of the California Department of Finance:

JESSE MCGUINN
Department of Finance

On Behalf of the State Controller's Office:

JOHN SILVA
State Controller's Office

Appearing Re Item 15:

On Behalf of Clovis Unified School District:

BILL MCGUIRE
Associate Superintendent
Clovis Unified School District

On Behalf of San Diego Unified School District:

JAMES A. CUNNINGHAM
Legislative Mandate Specialist
San Diego City Schools
Education Center
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

On Behalf of Department of Finance:

MATT AGUILERA
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

On Behalf of California State Association of Counties:

ALLAN P. BURDICK
DMG Maximus

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
49	19	Change "Highberg" to "Hiber"
54	28	Change "Highberg" to "Hiber"
55	1	Change "Highberg" to "Hiber"
56	5	Change "Highberg" to "Hiber"
56	6	Change "Highberg" to "Hiber"
64	18	Change "with" to "without"
86	25	Change "John" to Shawn"

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1 BE IT REMEMBERED that on Thursday,
2 September 28, 2000, commencing at the hour of 9:04
3 a.m., thereof, at the State Capitol, Room 126,
4 Sacramento, California, before me, DANIEL P. FELDHAUS,
5 CSR #6949, RDR and CRR, the following proceedings were
6 held:

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8 CHAIR PORINI: We'll go ahead and begin the
9 meeting of the Commission on State Mandates.

10 May I have roll call?

11 MS. HIGASHI: Mr. Beltrami is on vacation
12 this month.

13 Ms. Halsey?

14 MEMBER HALSEY: Here.

15 MS. HIGASHI: Mr. Lazar?

16 MEMBER LAZAR: Here.

17 MS. HIGASHI: Mr. Robeck?

18 MEMBER ROBECK: Here.

19 MS. HIGASHI: Mr. Sherwood?

20 MEMBER SHERWOOD: Here.

21 MS. HIGASHI: Ms. Steinmeier?

22 MEMBER STEINMEIER: Here.

23 MS. HIGASHI: Ms. Porini?

24 CHAIR PORINI: Here.

25 MS. HIGASHI: Before you begin your meeting
26 today, I'd like to introduce our new staff that have
27 started during the last couple weeks.

28 First, I'd like to introduce Kathy Lynch.

1 She started on Monday. She is our new staff counsel.

2 You'll be hearing from her probably in a couple of
3 months.

4 I'd like to reintroduce Julie Shelton to you.

5 She has been promoted to staff services analyst. She
6 is a long-time staff member of the Commission, and
7 many of you know her.

8 And I'd also like to introduce Tom Dempsey.
9 He started on Monday with the Commission, and he is a
10 member of our support staff.

11 CHAIR PORINI: Great. Welcome. We're glad
12 to have you with us and hope that we don't scare you
13 today.

14 All right, the next item of business?

15 MS. HIGASHI: The first item is approval of
16 the minutes for the last hearing, Item 1.

17 CHAIR PORINI: Does anyone have corrections,
18 changes, additions to the minutes?

19 All right.

20 MEMBER SHERWOOD: Move for approval.

21 MEMBER STEINMEIER: Second.

22 CHAIR PORINI: I have a motion and a second.

23 All those in a favor, indicate with "aye."

24 *(A chorus of "ayes" were heard.)*

25 CHAIR PORINI: Opposed?

26 The minutes are passed.

27 MS. HIGASHI: This brings us to the hearing
28 portion of our meeting, where we'll have a hearing on

1 test claims.

2 Will all of the witnesses and
3 representatives who will be speaking on Items 2
4 through 6 please stand for the swearing in?

5 Do you solemnly swear or affirm that the
6 testimony which you are about to give is true and
7 correct, based upon your personal knowledge,
8 information or belief?

9 *(A chorus of "I do's" was heard.)*

10 MS. HIGASHI: Thank you.

11 The first test claim to be heard is Item 2,
12 Photographic Record of Evidence. This item will be
13 presented by David Scribner of our staff.

14 MR. SCRIBNER: Good morning.

15 The test claim legislation requires a
16 photographic record of evidence, and, in some
17 instances, a certified chemical analysis of the
18 exhibit, for those exhibits in a criminal trial that
19 pose a security, storage or safety problem, or if the
20 exhibit, by its nature, is toxic and poses a health
21 hazard. Staff finds that the issue of whether the
22 test claim legislation represents a program centers on
23 if the test claim legislation carries out the
24 governmental function of providing services to the
25 public.

26 Staff finds that the program within which the
27 test claim legislation operates is the criminal
28 justice system in the state. Prosecution of criminals

1 in California is a peculiarly governmental function
2 administered by local agencies as a service to the
3 public, much like the provision of fire protection.
4 Therefore, in accordance with the principles set forth
5 in Carmel Valley, staff finds the claim activities
6 carry out the governmental function of providing
7 services to the public and thereby constitute a
8 program within the meaning of Article XIII B, section
9 6, of the California Constitution.

10 In order for the test claim legislation to
11 impose a reimbursable program under Article XIII B,
12 section 6, of the California Constitution, the
13 newly-required activities must be mandated by the
14 state.

15 Staff finds that the claim activities were
16 not required under prior law; and, therefore, under
17 current law, local law enforcement agencies are
18 required to provide a photographic record of evidence,
19 for evidence that poses a health, safety, security or
20 storage problem; provide a certified chemical analysis
21 of evidence that pose a health hazard; and store the
22 evidence.

23 Furthermore, staff finds that Government
24 Code section 17556, subdivision (e), is inapplicable
25 to the test claim as contended by the Department of
26 Finance.

27 There is no evidence that the test claim legislation
28 has provided offsetting savings to local law

1 enforcement agencies that result in no net costs.

2 Staff recommends that the Commission approve
3 the Photographic Record of Evidence test claim for the
4 activities outlined in the staff analysis.

5 Will the parties please state their name for
6 the record?

7 MS. STONE: Good morning, Chairman and
8 Members of the Commission. Pamela Stone on behalf of
9 the
10 Los Angeles Police Department, together with Chief
11 Forensic Chemist, Mr. Steven Johnson, and Detective
12 Norman Lee.

13 MR. BURDICK: And Allan Burdick on behalf of
14 the California State Association of Counties and also
15 on behalf of the Los Angeles Police Department.

16 MR. ZEMITIS: Cedrik Zemitis, Department of
17 Finance.

18 CHAIR PORINI: All right, would the
19 claimants like to begin?

20 MS. STONE: Yes, please. Thank you very
21 much, Madam Chair.

22 We would like to thank very much Commission
23 staff for the amount of time and effort they've placed
24 on this particular claim. And we do agree with the
25 Commission staff analysis in this matter.

26 If I could turn it over to Detective Norman
27 Lee.

28 MR. LEE: I've been employed by the City of

1 Los Angeles Police Department for 27 years. For the
2 past 12 years, I've been a detective in the narcotics
3 division. I'm presently a detective II supervisor,
4 assistant in charge of what is known as the "Complaint
5 Detail," which is the arresting processing team within
6 the narcotics division. My present title is Narcotics
7 Division Complaint Detail, Valley Filing Team, Officer
8 in Charge.

9 The Complaint Detail consists of seven
10 offices spread throughout the city, with a total of 30
11 people, who are responsible for obtaining all the
12 narcotics-related arrest reports citywide, and then
13 presenting them to the District Attorney for review
14 and prosecution. I'm one of the individuals
15 responsible for the oversight and supervision of the
16 units.

17 Additionally, if there are any problems or
18 matters presented to the District Attorney for
19 guidance or advice, as needed on prosecution, myself
20 or my supervisor would provide direction.

21 The LAPD agrees with the staff analysis on
22 this test claim. In all the years I have been in this
23 field, no defendant has ever introduced drugs into
24 evidence at trial, nor have I ever heard of a
25 defendant so doing.

26 If a defendant were to attempt to introduce
27 drugs into evidence at trial, that attempt would, in
28 itself, constitute a violation of criminal statutes.

1 It would be extremely difficult to
2 impossible for a defense attorney to explain why the
3 defendant had the right to legal possession of an
4 illegal substance. If an illegal substance or a drug
5 is brought into the court -- some individuals have
6 contraband when they go through the courthouse
7 security -- the drugs would be unrelated to the
8 underlying offense; and would, in fact, constitute a
9 new offense.

10 When individuals bring drugs into the
11 courthouse, and the same is found during the screening
12 at security, the individual is arrested and booked for
13 the new charge.

14 This, in fact, happened yesterday at Van
15 Nuys Courthouse when I interviewed the individual.

16 Again, I thank the Commission and staff for
17 their analysis and I'm available to answer any
18 questions.

19 CHAIR PORINI: All right, questions from
20 members?

21 Next witness?

22 MS. STONE: I have Mr. Steve Johnson, who is
23 the chief forensic chemist.

24 MR. JOHNSON: Good morning. My name is
25 Steve Johnson. I'm the Chief Forensic Chemist,
26 Assistant Laboratory Director for the Los Angeles
27 Police Department crime lab.

28 In my current capacity, which I've held for

1 the last nine years, I have responsibility for the
2 narcotics analysis functions at both the main facility
3 in downtown Los Angeles, and for our branch annex
4 located in Van Nuys.

5 Basically, I manage the people that are
6 performing the actual analysis of controlled
7 substances.

8 This recent change in the law and
9 implementation of policies by the Los Angeles Superior
10 Court of requiring the introduction of photographs
11 rather than the actual evidence itself has
12 significantly impacted our operation. We currently
13 have 12 employees performing narcotics-analysis
14 functions and have had to add two additional staff
15 members just to handle the increased workload due to
16 imaging, printing, distributing photographs of
17 narcotics evidence.

18 I would be happy to answer any questions
19 that you would have regarding this.

20 CHAIR PORINI: Questions from members?

21 MEMBER SHERWOOD: I have one question.

22 CHAIR PORINI: Mr. Sherwood?

23 MEMBER SHERWOOD: So prior to the law then,
24 the photographic aspect was not taking place?

25 MR. JOHNSON: That's correct. There was no
26 requirement. Officers would book evidence. The
27 evidence would come to the laboratory for analysis.
28 We would deliver our analysis results to Detective Lee

1 and his counterparts in the filing team. Charges
2 would be filed. And if the case would go to court,
3 the officer would retrieve the evidence, either
4 directly in one of the storage locations or we have a
5 routine courier system that picks up and delivers
6 evidence from all of our stations on a daily basis.
7 And the evidence would be couriered out to the
8 station. The officer would pick it up at the station,
9 take it to court.

10 Many years ago, the evidence was introduced
11 into court, the court took custody of the evidence and
12 basically maintained custody of the evidence and then
13 destroyed the evidence. The court was responsible for
14 that.

15 In more recent years, the court doesn't want
16 to keep the evidence. They would release it back to
17 the police department, which imposed additional
18 storage and destruction requirements on us.

19 Now we photograph the evidence, print the
20 photographs out, send these out to the stations. And
21 now the officer, rather than picking up his narcotics
22 at the station, picks up the pictures at the station
23 and takes the pictures to court.

24 MEMBER SHERWOOD: Okay, so even though you
25 weren't required to, before this law, you weren't
26 voluntarily using photographic evidence in any way?

27 MR. JOHNSON: Well, on a very limited basis
28 only with illicit drug labs, and that was because of a

1 separate section which allows us to dispose of
2 material, if we photograph the entire amount.

3 But as far as routine street drug samples,
4 we did not photograph those. There was no requirement
5 to do that.

6 To be blunt, my narcotics analysts are
7 running at about one and a half to two times the
8 national average of caseload. And I really didn't
9 want to impose an additional burden on these analysts
10 that are already overworked.

11 MEMBER SHERWOOD: Now, this is a tough
12 question and you may not be able to answer it, but
13 maybe someone else can. I wonder if this same
14 procedure was being followed at other police
15 departments around the state, if it was the common
16 practice. Would anybody be able to testify to that?

17 MS. STONE: With respect to photographic
18 records?

19 MEMBER SHERWOOD: Right.

20 CHAIR PORINI: Ms. Stone?

21 MS. STONE: Excuse me, Madam Chair.

22 The only thing I do know of is that in
23 Fresno County, when I was last working there
24 approximately two years ago, it was not a routine
25 issue because of the costs imposed and because also
26 you need the best evidence, and the best evidence
27 would be the actual narcotics.

28 MEMBER SHERWOOD: Thank you.

1 MR. JOHNSON: The only comment I would make
2 is that we were working jointly implementing our
3 program at the same time as the Los Angeles County
4 Sheriff's were implementing their own program, and
5 they had not been photographing any narcotics evidence
6 prior to the implementation of this program by the Los
7 Angeles superior and municipal courts.

8 MEMBER SHERWOOD: Thank you, sir.

9 CHAIR PORINI: All right, Mr. Burdick?

10 MR. BURDICK: Allan Burdick on behalf of
11 California State Association of Counties. In
12 response, there are several counties, as well as a
13 number of cities, that I think that that's pretty much
14 common throughout, that this is a new requirement; and
15 it would be very few law enforcement agencies were
16 doing that.

17 The only thing I did want to point out is
18 that Detective Lee, for getting into the issue about
19 bringing the drugs, that was the only real issue that
20 was raised by a state agency why you shouldn't find a
21 mandate, is that a criminal would present -- you know,
22 bring the drugs to court. So that was the exclusive
23 reason for getting into that.

24 I think I saw a little query on some people's
25 face as to why he was getting into that detail, but he
26 was addressing the only argument that has been placed
27 against this claim to date.

28 CHAIR PORINI: All right.

1 MR. BURDICK: So we would urge you to adopt
2 staff recommendation.

3 MEMBER ROBECK: Madam Chair?

4 CHAIR PORINI: Yes, Mr. Robeck?

5 MEMBER ROBECK: Who determines what
6 substances are hazardous or not? From the record, it
7 says that there must be a chemical analysis of
8 evidence that poses a health hazard. But who
9 determines whether or not a health hazard actually
10 exists or is potentially there? How is that
11 determination made?

12 MR. JOHNSON: Well, in the Los Angeles case,
13 there were meetings between the sheriff's department,
14 the police department and the superior court presiding
15 judge. Essentially the presiding judge issued an
16 order that no narcotics or controlled substances
17 evidence would be allowed.

18 MEMBER ROBECK: So that's a standing order?

19 MR. JOHNSON: That was essentially a
20 standing order from the court.

21 MEMBER ROBECK: What else is included in the
22 hazardous? Dynamite?

23 MR. JOHNSON: Explosives --

24 MEMBER ROBECK: Self-evident, but --

25 MR. JOHNSON: Hazardous materials, the only
26 thing that I have encountered in my work would be
27 chemicals that are used for the illicit manufacture of
28 narcotics. We've commonly encountered --

1 MEMBER ROBECK: Which are very volatile?

2 MR. JOHNSON: Yes.

3 MEMBER ROBECK: So that's not answering my

4 question. Who makes that determination?

5 CHAIR PORINI: Ms. Stone or Mr. Burdick?

6 MS. STONE: Mr. Robeck, I believe that there

7 are a list of classifications of toxic and hazardous

8 chemicals which is published by the Environmental

9 Protection Agency. And there are lists of those

10 chemicals and what does and does not constitute a

11 toxic or hazardous chemical, including volatile

12 compounds and other types of toxics.

13 MEMBER ROBECK: So that list serves as the

14 basis for determining what needs to have a

15 photographic record?

16 MS. STONE: I would submit, Mr. Robeck, that

17 that would serve as a guidance.

18 MEMBER ROBECK: But you're not sure?

19 MS. STONE: But I would not say that that

20 would be the exclusive list, or that there would not

21 be occasions when those materials would be -- would

22 not -- there would be occasions when those materials

23 would actually be brought in.

24 MEMBER ROBECK: Okay.

25 CHAIR PORINI: All right, other questions?

26 Mr. Sherwood?

27 MEMBER SHERWOOD: I might have a follow-up

28 question to Bruce's question, and I'm not -- that

1 raises a question in my mind. If this was a mandate
2 and it went to the P's and G's and then it goes to the
3 Controller, from an audit standpoint, it gets back to
4 how do we know what was and what wasn't classified as
5 toxic and what is to be paid and what isn't to be
6 paid. Because, obviously, we could photograph all
7 evidence that comes through, and then that would be
8 passed on as a toxic material when it isn't. But I
9 don't know. That raises a question in my mind.

10 I guess we need to, possibly in the P's and
11 G's, if this is approved, to know what would be
12 classified.

13 CHAIR PORINI: Mr. Robeck?

14 MEMBER ROBECK: And I would agree that we
15 need some clarification on that.

16 I would be satisfied, for example, if they
17 came back with the toxics list from the Environmental
18 Protection Agency served as the basis for making that
19 determination.

20 But I would also suggest that that would be
21 a decision by the judge, as to what constituted
22 evidence that had to be photographed.

23 And if you have a standing policy on
24 narcotics, that certainly makes sense. If you have a
25 standard policy on firearms or whatever, that would
26 make sense.

27 But what constitutes a hazardous substance
28 or poses a health hazard? That's pretty inclusive

1 language, and I don't see any boundaries in this.

2 MS. STONE: I believe, Mr. Robeck --

3 CHAIR PORINI: Ms. Stone?

4 MS. STONE: -- that there is also a list put
5 out by the Department of Health Services on
6 classification of toxic materials.

7 CHAIR PORINI: Okay.

8 MEMBER ROBECK: And I appreciate your
9 comments. But what I'm hearing is speculation, not
10 fact.

11 MS. STONE: I've seen the lists there but,
12 you know, I am not a chemist.

13 MEMBER ROBECK: Right.

14 MS. STONE: And I could not, for sure, tell
15 you that a specific chemical or compound was or was
16 not listed, either by the EPA or by the state DOHS.

17 MEMBER ROBECK: I understand that. But I'm
18 asking about what the process is for making that
19 determination. So that's what I want clarity on.

20 CHAIR PORINI: Why don't we go on with our
21 testimony? Maybe staff at some point would be able to
22 clarify what their understanding is before we move
23 ahead.

24 Department of Finance?

25 MR. ZEMITIS: Cedrik Zemitis, Department of
26 Finance.

27 Although the test claim statute may result
28 in additional costs to local governments, we do agree

1 with the staff analysis that the requirements are not
2 unique to local government because both the state and
3 the defendant are impacted by the statute.

4 However, we do disagree with the
5 interpretation of the Carmel Valley case, that the
6 statute only carries out the governmental function of
7 providing services to the public. The Carmel Valley
8 case addressed firefighter clothing and equipment,
9 which is a unique governmental function that does not
10 generally include private parties.

11 In this case, however, for every criminal
12 prosecution conducted by the government, there is a
13 defense often provided by private parties. So, again,
14 we believe that both the government and private
15 parties, the defense and the defendant, are impacted
16 by the statute. Therefore, we believe there is no
17 reimbursable mandate.

18 However, if the Commission does find a
19 reimbursable mandate, we believe any costs should
20 include only the reasonable marginal amounts needed to
21 comply with the statutes; and that any cost savings
22 should be considered.

23 CHAIR PORINI: All right, any questions?

24 MEMBER HALSEY: I have one.

25 CHAIR PORINI: Yes, Ms. Halsey?

26 MEMBER HALSEY: And I don't even know who to
27 direct this to or who can answer this.

28 As to the storage of evidence, I guess what

1 you're alleging is, there's a shift from the courts to
2 the police departments in storage. And who funded the
3 courts to store the --

4 MS. STONE: The courts are presently funded,
5 Ms. Halsey, through trial court funding. There is a
6 block grant given on the basis of the number of judges
7 and petitions you have within the court system.

8 MEMBER HALSEY: So --

9 MS. STONE: It's a state-funded program.

10 CHAIR PORINI: Okay. David, any comments?

11 MR. SCRIBNER: Sure. For Member Robeck's
12 comment; I think that with what can be done in the
13 P's and G's is to list either anything that the
14 superior court has laid out as hazardous materials,
15 anything that's a common understanding that they
16 operate under, possibly the additional list of the EPA
17 or anyone else, and can use those as the basis for
18 what can be reimbursed. And we can also at that point
19 maybe even consider that any claims for that need to
20 be backed up with some sort of proof that, yes, this
21 is --

22 MEMBER ROBECK: They will have to.

23 MR. SCRIBNER: Yes. Well, that this
24 material falls under one of these lists.

25 And if they are not inside the lists that
26 are in the P's and G's, where is that coming from.
27 Because I think it might be hard for us to get an all-
28 inclusive list at the Parameters and Guidelines. But

1 we could set out definitely kind of the universe. And
2 if they have to go outside of that, they can, you
3 know, add support for that.

4 As far as the Carmel Valley comment made by
5 Finance, the court in Carmel Valley found that for
6 fire protection, there may be private entities that do
7 fire protection in the state. However, they found
8 that although there may be this certain small
9 percentage of private-sector firefighters, that fire
10 protection is generally a governmental function
11 provided by the state. And, therefore, the provision
12 of protective clothing for firefighters is
13 reimbursable.

14 The same can be said here, that the
15 testimony said, well, the defendant really can't walk
16 into the building with drugs. So it's that small
17 subset that says, well, there might be this
18 possibility that a defendant can provide this
19 hazardous material. Why they would want to or if they
20 could is uncertain.

21 But generally, the provision of these
22 materials, these exhibits in criminal prosecution, is
23 a function of the state, of the government, and that's
24 why staff feels that this is an analogous situation.

25 CHAIR PORINI: All right any questions or
26 comments by members?

27 MEMBER STEINMEIER: Yes, one.

28 CHAIR PORINI: Yes, Ms. Steinmeier?

1 MEMBER STEINMEIER: Yes, on the offset
2 argument, at least what I heard, and I'd like to
3 corroborate this with Mr. Johnson, is that, in
4 reality, something is being couriered around, back and
5 forth. It's either physical evidence or photographic
6 evidence, so that there is really no offset. You
7 still have the same duties. You don't think there's
8 any less circulation because of photographic evidence;
9 do you?

10 MR. JOHNSON: We're not moving as many
11 packages of narcotics. We're moving photographs of
12 narcotics now. I have 12 light-duty police officers
13 that act as a courier service to move evidence around
14 the City of
15 Los Angeles. To be honest, they don't probably work
16 an eight-hour day. And so they could -- you know, we
17 could even have increased the volume of narcotics
18 without any additional costs to the city. We could
19 move more than what we're currently moving without any
20 additional costs. But when we had to start
21 photographing, then we had to have equipment and
22 manpower to perform that task. And that was an
23 additional cost. And there was no cost savings from
24 not having to move the evidence anymore.

25 MEMBER STEINMEIER: That's what I thought I
26 heard but I wanted you to repeat that. Thank you.

27 CHAIR PORINI: All right. Other questions
28 or comments by members?

1 MEMBER HALSEY: I have a question.

2 CHAIR PORINI: Ms. Halsey?

3 MEMBER HALSEY: So you were talking about

4 equipment and so on that you need. Is that basically

5 -- or is a portion of that a one-time cost then to be

6 set up to provide this service? And, of course,

7 obviously some of it's going to be recurring.

8 MR. JOHNSON: Yes, the initial equipment

9 investment would be a one-time cost. Then there's

10 ongoing costs for additional labor to actually perform

11 this function of actually imaging or taking

12 photographs of the material.

13 MEMBER HALSEY: But at some point the costs

14 should be recouped, and then there should be a further

15 cost savings down the road?

16 MR. JOHNSON: We will -- obviously, if we

17 buy printers to print these photographs on, we only

18 have to buy them once and then replace them

19 periodically. But the labor costs are ongoing and the

20 supply costs are going to be ongoing.

21 CHAIR PORINI: Other questions or comments

22 from members?

23 MEMBER STEINMEIER: I'd like to move the

24 staff recommendation.

25 MEMBER LAZAR: I'll second it.

26 CHAIR PORINI: All right, we have a motion

27 and a second.

28 Is there any further discussion?

1 All right, may I have roll call?
2 MS. HIGASHI: Ms. Halsey?
3 MEMBER HALSEY: Aye.
4 MS. HIGASHI: Mr. Lazar?
5 MEMBER LAZAR: Aye.
6 MS. HIGASHI: Mr. Robeck?
7 MEMBER ROBECK: Aye.
8 MS. HIGASHI: Mr. Sherwood?
9 MEMBER SHERWOOD: Aye.
10 MS. HIGASHI: Ms. Steinmeier?
11 MEMBER STEINMEIER: Aye.
12 MS. HIGASHI: Ms. Porini?
13 CHAIR PORINI: No.
14 MS. HIGASHI: The motion carries.
15 MS. STONE: Thank you very much.
16 MS. HIGASHI: Could we take just about a
17 five-minute break? We have someone in here who can
18 check the microphone system.
19 CHAIR PORINI: Thank you.
20 (Off the record from 10:02 a.m. to 10:14 a.m.)
21 CHAIR PORINI: I'm not sure whether the
22 microphones are working now. I understand they're
23 going to send a technician down, so we'll give it a
24 shot. And if it works, that's fine; if not, we'll
25 just have to rely on our recorder and hope that folks
26 can speak loudly.
27 Before we get going on this next test claim,
28 shall we take up the consent calendar?

1 MS. HIGASHI: We'll take up the consent
2 calendar.

3 CHAIR PORINI: Okay.

4 MS. HIGASHI: The consent calendar consists
5 of Items 7, 8, 9, 10 as revised, Item 11, Item 13 as
6 revised, Item 16 and Item 17.

7 CHAIR PORINI: All right, any questions or
8 comments from members? Anything that needs to be
9 removed from consent calendar?

10 Do I have a motion?

11 MEMBER LAZAR: So moved.

12 MEMBER STEINMEIER: Second.

13 CHAIR PORINI: I have a motion and a second
14 to adopt the consent calendar.

15 All those in favor, indicate with "aye."
16 *(A chorus of "ayes" was heard.)*

17 CHAIR PORINI: Opposed?

18 Consent calendar is adopted.

19 MS. HIGASHI: This brings us to Item 3.
20 This is the test claim on Law Enforcement, Racial and
21 Cultural and Diversity Training. This item was first
22 heard last month.

23 Ms. Shelton will present this item.

24 CAMILLE SHELTON: This test claim addresses
25 the basic training requirement for peace officer
26 recruits. As indicated by Ms. Higashi, the test claim
27 was originally presented to the Commission last month,
28 and the Commission continued the item based on the

1 claimant's testimony that it was limiting its test
2 claim to request reimbursement for the activity of
3 providing the basic training course for racial and
4 cultural diversity to its new recruit employees.

5 Staff's conclusions and recommendation on
6 this matter have not changed. Staff still recommends
7 that the Commission deny this test claim because the
8 test claim statute is not subject to Article XIII B,
9 section 6 of the California Constitution.

10 The test claim statute does not impose any
11 mandated duties on local agencies to provide basic
12 training, including the training on racial and
13 cultural diversity. And it does not require local
14 agencies to incur any costs to send their new
15 employees to basic training.

16 Will the parties please state your names for
17 the record?

18 MR. KAYE: Leonard Kaye, County of Los
19 Angeles.

20 MR. BURDICK: Allan Burdick on behalf of the
21 California State Association of Counties.

22 MR. JOHNSON: Steve Johnson from the
23 Los Angeles Police Department.

24 MR. FOREMAN: Jim Foreman, Department of
25 Finance.

26 MR. LUTZENBERGER: Tom Lutzenberger,
27 Department of Finance.

28 CHAIR PORINI: Okay, now, we heard extensive

1 testimony on this issue last time. We had one
2 outstanding piece that we asked staff to go back on.
3 So let's try to limit our testimony to just briefly
4 bringing back the history and then talking about the
5 one outstanding piece that staff has commented on.

6 MR. KAYE: Good morning. I'll try and be
7 brief.

8 I'd like to just mention that since the last
9 meeting, we did send in a page and a half, which
10 basically restated what we said before at the hearing.

11 And Lieutenant Randy Olson, who you heard from, also
12 sent in a listing, which should be in your
13 administrative record, of the graduates since 1975 of
14 our basic training academy, which total 13,311. I'd
15 just like to make that clear.

16 As Commission staff have stated, we feel
17 it's important not to really dispute whether -- the
18 issue regarding the peace officer. Obviously, the
19 peace officer has the duty of scholarship to complete
20 the basic training course. The mandate is clearly
21 upon the peace officer.

22 However, we disagree with Commission staff.

23

24 We feel that basic training academies operated by
25 cities, counties and community colleges are mandated
26 to provide the subject training.

27 Now, in fairness to staff, they don't
28 necessarily disagree with that; they just don't

1 address the issue. We feel that that issue needs to
2 be addressed.

3 Commission staff state only that the
4 requirement to complete the basic training course on
5 racial and cultural diversity is a mandate imposed
6 only on the individual who seeks peace officer status
7 -- that's their analysis, page eight -- and that our
8 trainees pay for this program at an average cost of
9 2,000 dollars.

10 Commission staff have yet to say who is
11 mandated to provide the training. If basic training
12 academies do not have this mandate, who does?

13 Now, I'd like to skip, in the interest of
14 time, to the most current version of Commission's
15 staff analysis. This is on page five of their
16 analysis, and go to their summary box at the top of
17 page five. And, again, we find substantial agreement.

18 But we'd like to suggest that it be modified
19 slightly, and we're prepared to provide testimony to
20 this effect today.

21 This states, "If the Commission disagrees
22 with staff's findings on Issue 1" -- as we propose
23 that you do find today -- "and concludes that the test
24 claim statute is subject to Article XIII B, section 6
25 of the California Constitution, in that basic training
26 is a duty imposed on" -- and we would insert the
27 phrase "some," not "all." So we would say, "that
28 basic training is a duty imposed upon some local

1 agencies." And we would continue that, comma.

2 Then the Commission must move on to Issue 2.

3 In other words, we've won that.

4 Now, let's talk about Issue 1 for a minute.

5 We believe you should find Issue 1, that it imposes a
6 mandate on some local agencies, as some local agencies
7 have chosen to implement a basic training academy long
8 before -- long before the test claim legislation; long
9 before January 1, 1975, the threshold measurement date
10 for finding a higher level of service under
11 Article XIII B, section 6 of the California
12 Constitution.

13 Indeed, the Los Angeles basic training
14 academy was started in 1935 -- LAPD, who I understand
15 was started in the 1920's. And I'm very pleased that
16 today we have folks from LAPD to tell you about their
17 program as well.

18 Thank you.

19 CHAIR PORINI: All right, Mr. Burdick?

20 MR. BURDICK: Thank you very much, Madam
21 Chair, Members of the Commission.

22 Again, we want to focus on the recruit
23 training. I would take a little bit of exception with
24 my colleague, Mr. Kaye. I don't think you need the
25 "some," because I think only those agencies that have
26 costs would be seeking this.

27 So I think what he's trying to point out to
28 you, is that it's generally only going to be the very

1 large agencies, large counties, large cities -- I
2 think there's twenty-some academies that would
3 probably be filing claims, because those are the ones
4 that would be incurring costs.

5 If you're a small organization, you're going
6 to be getting people who have already been trained,
7 and you would not be incurring those costs.

8 So I think Leonard was just trying to put
9 the scope in place that essentially this is a large-
10 agency mandate where you're so large, that you need to
11 have your own academy. And I think that's kind of
12 what we're focusing on here.

13 And so what we want to do is to show you why
14 we think that local agencies cannot -- such as Los
15 Angeles County and Los Angeles Police Department and
16 the Riverside County, as an example of an academy --
17 cannot hire people and have community colleges provide
18 those to you.

19 Secondly, I'd like to point out, Leonard
20 suggested to you some fairly impressive statistics as
21 to the number of people that were graduated. That is
22 a fairly small number, when you look at the number of
23 people that were recruited or then began the program
24 and then went through it. So it's a much larger
25 number that you start with, then you begin narrowing
26 it down.

27 And I would like to point out to you that
28 the law enforcement agencies I've talked to, most of

1 them indicate they can still not get enough people to
2 recruit, even though they're recruiting nationwide.
3 And Officer Johnson will be talking to you about the
4 program a little bit that they have in the Los Angeles
5 Police Department.

6 While he does not have a current
7 responsibility over training, he has direct knowledge
8 of what they do in LAPD. I also worked closely with
9 the people in the training department in the Los
10 Angeles Police Department, and have some knowledge
11 about what their process is in terms of going through
12 recruit training and how that process goes.

13 So with that, what I would like to do is
14 turn it over to Steve to tell you a little bit about
15 the L.A. academy and why it would be totally
16 unreasonable for them to be able to -- and impossible
17 for them to really be able to go out and say, "The
18 first thing we're going to do is to have people go
19 through a community college course before they can
20 even become a candidate for us to consider recruitment
21 to the Los Angeles Police Academy."

22 Thank you.

23 CHAIR PORINI: All right, Mr. Johnson?

24 MR. JOHNSON: Good morning again.

25 My testimony will be limited, very narrowly
26 focused. It was obviously not my intent to discuss
27 this issue this morning.

28 Our training academy dates back to the late

1 twenties, early thirties. In fact, many of the
2 buildings on our police academy facility were built
3 for the 1932 Olympics in Los Angeles. So our program
4 has been around for quite a while.

5 We are currently recruiting nationwide. Our
6 equal opportunity development division commanding
7 officer is senior management analyst, Nancy Janoosa
8 (phonetic), who formerly was my boss and I know quite
9 well, has shared with me that our recruitment efforts
10 are becoming much more difficult. We are having
11 trouble filling our existing positions, and we've had
12 to recruit across the country to try to find qualified
13 applicants for our vacant positions. It's kind of a
14 buyer's market now out there in the employment area,
15 and it's very difficult to recruit.

16 And because we're recruiting on a nationwide
17 basis, trying to ask someone from another state to
18 attend a course to come out to a California community
19 college would be problematic, at best. It would limit
20 our recruitment efforts to only people that would be
21 able to take a course prior to applying for work with
22 the department.

23 And so essentially the only way that we can
24 deal with people coming from throughout the country to
25 work in our agency, is to provide the training
26 in-house. We have a very tight schedule in our
27 academy training. I've been involved with that for a
28 number of years, as the laboratory provides training

1 in the academy, and it's difficult to schedule these
2 time frames to provide our training to the new recruit
3 officers. Trying to mesh our schedule even with a
4 local community college, to send them to this class
5 after that would be problematic, at best.

6 We have classes starting as frequently as
7 once a month or sometimes two classes a month, and
8 trying to integrate that schedule with the schedule of
9 another institution such as a junior college or other
10 academic institution would be difficult.

11 MR. BURDICK: Kind of in closing, I'd like
12 to add two things. I think I'd like you, particularly
13 the state members, to take into consideration your two
14 law enforcement agencies that have academies: The
15 California Highway Patrol and the Department of
16 Corrections; and to see if you could -- in talking to
17 those people, if they feel they could in any way
18 possible, live with the limitation that any person
19 that they were going to go out to hire would have to
20 come first pass a California community college-based
21 POST-certified course, before they could be recruited
22 into a large academy like that.

23 And I think that you would find their
24 response is exactly what Mr. Johnson reported to you,
25 that it really is an impossibility to fathom that --
26 and I'm sure you also recruit nationwide for your
27 officers in the Department of Corrections and for the
28 California Highway Patrol.

1 We would urge you to find a mandate for
2 recruits.

3 Thank you very much.

4 CHAIR PORINI: All right, questions?

5 Next witness? Oh, I'm sorry, Mr. Robeck.

6 MEMBER ROBECK: Over the last ten years,
7 what portion of your academy recruits came from out of
8 state?

9 MR. JOHNSON: As I said, I was not here to
10 address that. I was asked to address specific issues.
11 I don't have those numbers with me.

12 MR. BURDICK: Yes, and I don't --

13 MEMBER ROBECK: Would you hazard a guess,
14 based on your experience?

15 MR. JOHNSON: It would be exactly that, a
16 guess. I would have to check with someone from our
17 EODE.

18 MEMBER ROBECK: How about Mr. Kaye?

19 MR. KAYE: I have no knowledge of that.

20 MR. BURDICK: Yes, I don't think any of us
21 would be in a position to give you statistics on the
22 numbers of people, where they -- you know, how many
23 were from out of state.

24 But in recruiting nationwide, I will tell you
25 that in other recruitments that are done, there is
26 very often an interest in coming to California from
27 other states.

28 And we do do nationwide recruitment of

1 police chiefs and other people. And so these are
2 recruits, obviously. And I can tell you in those
3 particular cases, we get a very high portion of people
4 who are interested in coming to California. We've had
5 positions in some cases where over half of the people
6 do come from other states.

7 CHAIR PORINI: All right. Other questions?

8 MEMBER STEINMEIER: A comment.

9 CHAIR PORINI: A comment?

10 MEMBER STEINMEIER: Unfortunately, it
11 doesn't change the fact that the burden of paying for
12 this really falls upon the recruit, even though
13 practically that's difficult to do because of the
14 situation you've just described. To me, it sounds
15 like something the Legislature needs to take up if
16 there really is a shortage of police officers and
17 training is a problem. Unfortunately, the Commission
18 doesn't have the ability to do that. We have to look
19 at the current law we're talking about.

20 CHAIR PORINI: Mr. Kaye?

21 MR. KAYE: Thank you.

22 I'd like to address Ms. Steinmeier because I
23 think in a way it's a valid point. But a fallback
24 position, if you will, of ours is what Commission
25 staff have given you the possibility of, and that is,
26 to provide the trainer's time. In other words, the
27 time that it takes for us to present this training to
28 recruits. And that, of course, is a tiny fraction of

1 the costs of paying that. And this would be sort of a
2 -- how can I put it --

3 MEMBER STEINMEIER: A down payment?

4 MR. KAYE: This would be a shallow victory
5 for local government; but, nevertheless, a tiny
6 foothold into addressing the problem that we face.

7 MEMBER STEINMEIER: I have some sympathy for
8 that. But, unfortunately, the Commission's abilities
9 are very narrowly focused. So I will reluctantly vote
10 for the staff's position. I'm sorry.

11 CHAIR PORINI: All right, we go on with our
12 next witness.

13 MR. FOREMAN: Madam Chair, Commission
14 Members, Jim Foreman, Department of Finance.

15 As we indicated in our analysis of the
16 legislation at the time that it was enrolled, we do
17 believe that the legislation does not create a local
18 mandate. We would agree with the Commission staff and
19 recommend that the Commission deny this claim.

20 We believe, as Mr. Kaye indicated, that there
21 are some local entities who have chosen to provide
22 this training for their applicants, and we certainly
23 understand their feeling that there is a need to do
24 that in order to meet their needs. However, we still
25 believe that that's a discretionary activity on the
26 part of these local entities, and that this particular
27 piece of legislation only required -- presents a
28 requirement for the officer. And so we would

1 recommend that the claim be denied.

2 CHAIR PORINI: Any questions?

3 MR. BURDICK: Can I respond to the
4 Department of Finance?

5 CHAIR PORINI: Mr. Burdick?

6 MR. BURDICK: Very quickly, essentially what
7 I want to clarify is, the Department of Finance is
8 indicating that it is at the discretion of the Highway
9 Patrol and the Department of Corrections, that they
10 could recruit enough recruits to staff the State of
11 California large agencies because they have chosen to
12 do so. And so essentially saying that Los Angeles
13 County and Los Angeles Police Department and other
14 very, very large agencies, which have found that they
15 have no alternative but to do this, they're not doing
16 it at their own option; they're doing it because it is
17 the only possible alternative. And I would argue that
18 if you ask the Highway Patrol and the Department of
19 Corrections, they would claim they have no
20 alternative.

21 But I believe that Mr. Foreman is indicating
22 that apparently since locals have chosen that,
23 apparently the state has also issued its discretion to
24 do this and pay for it out of state taxpayer dollars
25 because they could have otherwise gotten people and
26 had them trained in community colleges.

27 CHAIR PORINI: All right, Mr. Foreman, did
28 you wish to comment?

1 MR. FOREMAN: I do.

2 I would like to clarify that we are saying

3 that the Highway Patrol and the Department of

4 Corrections are opting to do it and they are opting to

5 pay for it. And we are suggesting that those local

6 entities that have opted to provide this training

7 should also pay for it.

8 CHAIR PORINI: All right. Mr. Robeck?

9 MEMBER ROBECK: I have a question for Mr.

10 Kaye.

11 In the supplemental submission that you

12 made, you included a list of the -- by year -- of the

13 graduating recruits.

14 MR. KAYE: Yes, sir.

15 MEMBER ROBECK: You had no recruits graduate

16 in 1993; is that correct?

17 MR. KAYE: I guess, that's what the list

18 says.

19 MEMBER ROBECK: Okay. Did you hire any

20 police officers in 1993?

21 MR. KAYE: Unfortunately, I'm not an

22 employee of the L.A. County Sheriff's Department, and

23 I really have --

24 MEMBER ROBECK: I know, but you submitted

25 this information; right?

26 MR. KAYE: No, this information was

27 submitted by Lieutenant Randy Olson, and I think it

28 was submitted by a Gregory Adams; and I merely passed

1 it along.

2 MEMBER ROBECK: The fax cover is addressed
3 to you.

4 MR. KAYE: Yes, I passed it along.

5 And also I included in the submission to the
6 Commission, which included this, a declaration,
7 indicating that certain things were to my information
8 or belief. So it's my information or belief that this
9 list is correct.

10 MEMBER ROBECK: Okay. So you don't know
11 what happened in 1993, when there were no graduates?

12 MR. KAYE: That is a correct statement.

13 MEMBER ROBECK: Nor in 1992, when there were
14 55 graduates?

15 MR. KAYE: That's a correct statement.

16 CHAIR PORINI: All right, any other
17 questions or comments?

18 All right, do I have a motion?

19 MEMBER ROBECK: I move the staff
20 recommendation.

21 MEMBER SHERWOOD: I'll second that.

22 CHAIR PORINI: We have a motion and a second
23 for staff's recommendation.

24 Is there any discussion?

25 Hearing none, may I have roll call?

26 MS. HIGASHI: Mr. Lazar?

27 MEMBER LAZAR: Aye.

28 MS. HIGASHI: Mr. Robeck?

1 MEMBER ROBECK: Aye.

2 MS. HIGASHI: Mr. Sherwood?

3 MEMBER SHERWOOD: Aye.

4 MS. HIGASHI: Ms. Steinmeier?

5 MEMBER STEINMEIER: Aye.

6 MS. HIGASHI: Ms. Halsey?

7 MEMBER HALSEY: Aye.

8 MS. HIGASHI: Ms. Porini?

9 CHAIR PORINI: Aye.

10 Thank you.

11 MS. HIGASHI: This brings us to Item 4, the

12 hearing on the Health Benefits for Survivors of Peace

13 Officers and Firefighters.

14 Mr. Avalos will present this item.

15 MR. AVALOS: Good morning. This test claim

16 deals with the providing of survivor health benefits

17 for employees of local entities. The test claim

18 legislation is the result of a compromise.

19 Originally, survivor health benefits were to be

20 provided for all local employees. As a compromise,

21 the test claim legislation extended survivor health

22 benefits only to peace officers and firefighters

23 killed in the line of duty, but also granted local and

24 police the right to collectively bargain for survivor

25 health benefits.

26 There are two issues before the Commission:

27 First is whether the requirement to provide survivor

28 health benefits constitutes a new program or higher

1 level of service; and second is whether the
2 requirement to collectively bargain survivor health
3 benefits constitutes a reimbursable estate-mandated
4 program.

5 To the first issue, the Department of
6 Finance asserts that the requirement that provides
7 survivor health benefits does not result in a new
8 program or higher level of service, since the test
9 claim legislation is a law of general application,
10 which applies to both private and public employers
11 alike.

12 Staff finds that the requirement to provide
13 survivor health benefits does not apply to both public
14 and private employers, since the test claim
15 legislation is limited to providing survivor health
16 benefits to peace officers and firefighters killed in
17 the performance of their duties and, therefore, cannot
18 be considered a law of general application.

19 To the second issue, the Department of
20 Finance asserts that the requirement to collectively
21 bargain for survivor health benefits does not
22 constitute a reimbursable state-mandated program
23 because the test claim legislation is a law of general
24 application that merely eliminates the collective
25 bargaining exemption, returning the collective
26 bargaining process to the status quo.

27 The Department further maintains that the
28 option to bargain does not constitute a reimbursable

1 state mandated program because the collective
2 bargaining agreement can only be adopted at the
3 discretion of the claimant.

4 Staff finds that the elimination of the
5 collective bargaining exemption does not create a law
6 of general application since the requirement to
7 collectively bargain for survivor health benefits is
8 only imposed upon local governments.

9 Staff finds that local governments are
10 required to collectively bargain with representatives
11 of employee organizations regarding survivor health
12 benefits, if raised by the parties during
13 negotiations. However, staff finds that reimbursement
14 is limited to the collective bargaining agreement
15 process, does not include reimbursement for benefits
16 the local government employer agrees to provide.

17 Accordingly, staff finds that the test claim
18 legislation constitutes a reimbursable state-mandated
19 program and recommends that the Commission approve the
20 health benefits for survivors of peace officers and
21 firefighters test claim for the following activities:

22 Providing survivor health benefits for the spouses
23 and children of peace officers and firefighters who
24 are killed in the line of duty protecting the public;
25 and collectively bargaining with representatives and
26 employee organizations in providing survivor health
27 benefits.

28 Will the parties and representatives please

1 state their names for the record?

2 MR. HENDRICKSON: Jim Hendrickson, City of
3 Palos Verdes Estates.

4 MS. STONE: Pam Stone on behalf of the City
5 of Palos Verdes Estates.

6 MR. BURDICK: Allan Burdick on behalf of the
7 City of Palos Verdes Estates and the California State
8 Association of Counties.

9 MR. POGUE: Deputy Attorney General Ken
10 Pogue on behalf of the Department of Finance.

11 MR. HIGHBERG: John Highberg, Department of
12 Finance.

13 CHAIR PORINI: All right, Ms. Stone, would
14 you like to begin?

15 MS. STONE: Yes, please.

16 Thank you very much, Madam Chair, Members of
17 the Commission.

18 This particular legislation is applicable
19 only to local government. It requires local
20 government to pay for the total cost of health
21 benefits to surviving spouses and dependent children
22 of peace officers and firefighters that are killed in
23 the line of duty. Unlike other benefits that are
24 available, this is required to be paid 100 percent by
25 the employer, and the benefits to the surviving spouse
26 continue even if that surviving spouse should remarry,
27 although it does not pass to any subsequent spouse of
28 the surviving spouse or to any subsequent children.

1 This is a requirement that is inapplicable to private
2 employers or to public employees for individuals who
3 are not safety members.

4 Additionally, the issue of collective
5 bargaining, there is some reference by the Department
6 of Finance to the fact that local governmental
7 entities have the choice as to whether to collectively
8 bargain. It is respectfully submitted that should a
9 bargaining unit raise the issue, one must, in fact,
10 bargain with the representative unit. It does not
11 necessarily mean, however, we agree with staff that
12 the costs thereof are reimbursable because that's
13 clearly within the choice of the employing agency to
14 pay for those benefits. However, once an employee
15 unit desires to bargain on a particular issue,
16 unfortunately, you are required to bargain in good
17 faith, at least to impasse with the unit.

18 And with that, I'll turn it over to
19 Mr. Hendrickson, who is the city manager of the City
20 of Palos Verdes Estates.

21 MR. HENDRICKSON: Good morning, Madam Chair
22 and Members of the Commission.

23 As Pam has stated, my name is Jim
24 Hendrickson. I'm the City Manager with the City of
25 Palos Verdes Estates.

26 I've served as City Manager for 11 years
27 with this city, and I've been in local management for
28 about 28 years in the state of California.

1 It's a pleasure to be here and to present
2 our claim.

3 For your background information, this claim
4 basically emanates from the shooting death of two
5 police officers, a sergeant and a captain, at a team-
6 building seminar that we held at the Holiday Inn in
7 the City of Torrance on Valentine's Day 1994. I was
8 present when those deaths occurred.

9 The initial legislation that was passed in
10 1996 did not address our issue because it was
11 prospective.

12 In 1997, the State Legislature made these
13 benefits retroactive to all surviving spouses of
14 police officers.

15 In our case, we had two widows who were
16 offered this benefit immediately after it was mandated
17 by the state. One chose not to take it; the other
18 chose to accept the benefit.

19 Our calculations show that over the
20 actuarial life of this particular individual, it will
21 cost our jurisdiction 130,000 dollars. And that's not
22 an inconsiderable sum for a small agency.

23 We've carefully reviewed the staff
24 attorney's report, and we concur in it totally. And
25 we would encourage you to adopt the report, as
26 presented.

27 And I'd be happy to answer any questions that you
28 might have of me.

1 CHAIR PORINI: All right, questions from
2 members?

3 MEMBER HALSEY: Yes.

4 CHAIR PORINI: Ms. Halsey?

5 MEMBER HALSEY: With regard to collective
6 bargaining, if the Commission were to find that there
7 is a state mandate, what would be reimbursable?

8 MS. STONE: With regard to collective
9 bargaining, that would be similar to just that
10 negotiation portion that the Commission has previously
11 approved, for example, with school district collective
12 bargaining. It would be the actual cost of the
13 negotiation for that one particular issue. It would
14 not cover the rest of the issues that are being
15 collectively bargained. It would be just the amount
16 of time devoted by city staff, in this particular
17 instance, as well as any employee representative who
18 was actually on duty during the period of time of the
19 bargaining; plus whatever printed materials there
20 would be, the cost of actual supplies.

21 It's just for negotiation of this one
22 particular issue, not for the costs of any benefits
23 that might be provided voluntarily by the employing
24 agency as a result of any agreements reached between
25 the employing agency and the bargaining unit.

26 CHAIR PORINI: All right, any other
27 questions?

28 Mr. Burdick?

1 MR. BURDICK: Yes, I'm just here to urge the
2 support of the staff recommendation. And I would
3 doubt seriously if you're going to see any collective
4 bargaining costs claimed by local agencies on this
5 particular mandate.

6 CHAIR PORINI: All right.
7 Department of Finance?

8 MR. POGUE: Yes, Ken Pogue, Attorney
9 General's office. Just briefly; the Department of
10 Finance has nothing further on the issue of the actual
11 extension of benefits.

12 Briefly, on the issue of the collective
13 bargaining process, the staff analysis pointed out
14 that, traditionally, the collective bargaining process
15 has included the requirement that local agencies
16 bargain in good faith for different types of benefits.

17 Prior to 1984 -- and I guess that would be 1969, when
18 the Meyers-Miliias-Brown Act first came into effect,
19 and between 1984 there was no bar to collective
20 bargaining for survivor benefits. Only in 1984 did
21 this requirement, or this bar come into effect.

22 And now it is the Department of Finance's
23 position that we're merely going back to the original
24 intent of the Meyers-Miliias-Brown Act, and nothing
25 further.

26 Further, the Department of Finance agrees
27 that the staff analysis is correct, in that even if
28 collective bargaining costs are reimbursable, that the

1 costs associated with the actual providing of the
2 benefits are not reimbursable because that is up to
3 the county or the local agency involved in the
4 negotiation process as to whether or not they want to
5 give those benefits. And we would urge that portion
6 of the analysis be approved.

7 CHAIR PORINI: Okay. Any further questions
8 or comments from members?

9 MEMBER HALSEY: Yes.

10 CHAIR PORINI: Ms. Halsey?

11 MEMBER HALSEY: I'm wondering if staff could
12 just help to explain a little bit more about the
13 collective bargaining and the prior law versus the
14 test claim.

15 CHAIR PORINI: Sean?

16 MR. AVALOS: When the Commission staff would
17 look at the test claim, we look at the law immediately
18 preceding the enacting statute. And in this statute
19 in this case, they were exempt from collective
20 bargaining. Prior to the statute, the exemption for
21 collective bargaining was lifted and, therefore, they
22 are required to collectively bargain. Therefore, we
23 concluded it was a new program or higher level of
24 service.

25 CHAIR PORINI: Okay. Finance, do you want
26 to make a comment on that?

27 MR. HIGHBERG: We concur with the earlier
28 comments of -- John Highberg, Department of Finance.

1 We concur with the earlier comments by the
2 Department of Justice. And we'll reiterate that prior
3 to 1984, local governments could bargain for this
4 benefit. This prohibition was in effect for a certain
5 number of years; and, in effect, what this law does is
6 returns us to where we were prior to 1984.

7 CHAIR PORINI: Okay. Ms. Stone?

8 MS. STONE: Yes, thank you very much, Madam
9 Chairman.

10 We do disagree with the issue of collective
11 bargaining. Prior to -- with the initial enactment of
12 the Meyers-Miliias-Brown Act, there was authority to
13 bargain collectively between employers and their
14 employees, which previously had not existed. The
15 problem with the analysis of the Department of
16 Finance, is there were restrictions on what benefits
17 could be provided under PERS. And this particular
18 collective bargaining exemption refers back to PERS.

19 It was only at such time as PERS was also
20 amended to provide for these types of benefits, that
21 the exemption under -- that had been enacted in 1984
22 was lifted. So even though there was authority to
23 bargain, so to speak, prior to 1984, the ability to
24 provide this benefit was not specifically provided in
25 statute; and, therefore, there was no authority to
26 provide that benefit.

27 So we do agree that, you know, prior to 1984
28 you could bargain for benefits; but we disagree that

1 this was not a benefit that was authorized to be given
2 by law at that juncture.

3 That's in summary.

4 CHAIR PORINI: All right. Mr. Highberg?

5 MR. HIGHBERG: The Department of Finance
6 actually agrees with that observation. However, it's
7 important to note that not all retirement benefits
8 exist in statute at the time that they're bargained.
9 It is possible and some local governments do actually
10 bargain for benefits before there is a specific
11 statute available to provide that benefit.

12 CHAIR PORINI: Mr. Burdick?

13 MR. BURDICK: We would concur with the
14 Department of Finance's analysis. But if you bargain
15 for something at your own option, you could also then
16 bargain it away. And so now this is a state mandate,
17 a state law, we have no option. And since we do have
18 some new members, you know, the key thing is, if
19 you're doing something at your option and it's
20 mandated, you're entitled to reimbursement. You're
21 not precluded just because somebody else hadn't
22 bargained it and they now require it. Everybody is
23 now required to do this, and so it is mandated, and so
24 everybody is entitled to it.

25 I would also like to point out, as it
26 relates to the PERS issue on the county side, most of
27 the large counties are 1937 Act counties who do not
28 participate in PERS, and the vast majority of county

1 government employees, probably at least 80 percent of
2 the county peace officers and firefighters affected by
3 this, are covered under the '37 Act and are not
4 covered by PERS.

5 CHAIR PORINI: Okay, questions or comments
6 from members?

7 MEMBER HALSEY: I have a question.

8 Are you --

9 CHAIR PORINI: Ms. Halsey?

10 MEMBER HALSEY: I'm sorry.

11 So are you linking the -- if the alleged
12 mandate for health benefits to collective bargaining,
13 you're saying if there's one -- if there's a mandate
14 for one, there's a mandate for both?

15 CHAIR PORINI: Mr. Burdick?

16 MR. BURDICK: I'm simply saying that we have
17 always had the alternative to bargain issues since
18 1969 at your option. You could give them, you could
19 take them away if the parties agreed in their
20 memorandum of understanding.

21 Essentially also a local government has the
22 right to unilaterally adopt their policy at that
23 point. So if they had -- at some time, as some agency
24 had -- I don't believe any of the 58 counties and four
25 hundred eighty or ninety-some cities had ever had this
26 particular benefit in place. There may have been but
27 I don't know of any that did. They could have ended
28 that process and discontinued doing that.

1 And so the point, though, that I was
2 pointing out is, if a local agency is doing something
3 at their option, they happen to be doing something
4 before you found it to be a mandate, most of the
5 agencies were, that does not preclude those agencies
6 that were doing it at their own option from being
7 reimbursed.

8 This Commission has found that because that
9 local agency could have stopped doing that, if the
10 city council had told them they wanted them to stop,
11 they could do that. But when you change the state law
12 and mandate them, everybody has to continue to do it.

13
14 So that's why what I'm saying, it really
15 doesn't make any difference if you negotiated this
16 earlier or not. Everybody now has no option but to
17 continue to provide that benefit. And we don't
18 penalize those who may have somehow in the past had
19 the option of discontinuing that benefit, which has
20 now become mandated.

21 CHAIR PORINI: Staff, did you have a
22 comment?

23 MS. HIGASHI: I was just going to add that
24 Mr. Burdick is referring to the provisions in
25 Government Code 17565, which do provide as he has
26 described.

27 CHAIR PORINI: All right.

28 MEMBER SHERWOOD: Can I interject?

1 CHAIR PORINI: Yes, Mr. Sherwood?

2 MEMBER SHERWOOD: I would like to move

3 approval of staff's recommendation.

4 MEMBER LAZAR: I'll second.

5 CHAIR PORINI: All right. We have a motion

6 and a second.

7 Is there further discussion?

8 All right, roll call, please.

9 MS. HIGASHI: Mr. Robeck?

10 MEMBER ROBECK: Aye.

11 MS. HIGASHI: Mr. Sherwood?

12 MEMBER SHERWOOD: Aye.

13 MS. HIGASHI: Ms. Steinmeier?

14 MEMBER STEINMEIER: Aye.

15 MS. HIGASHI: Ms. Halsey?

16 MEMBER HALSEY: Aye.

17 MS. HIGASHI: Mr. Lazar?

18 MEMBER LAZAR: Aye.

19 MS. HIGASHI: Ms. Porini?

20 CHAIR PORINI: No.

21 MS. STONE: Thank you very much.

22 CHAIR PORINI: Thank you.

23 We're going to break just for a minute here.

24 We have a technician working on the microphones.

25 (Discussion off record from 10:53 a.m. to 10:57

26 a.m.)

27 CHAIR PORINI: All right. The microphones

28 are working so we'll go ahead and resume.

1 MS. HIGASHI: We've now reached Items 5 and
2 6. Item 5 is Budget Process Financial Statements and
3 County Oversight. This item, as well as the following
4 item, 6, County Office Budget Process and Financial
5 Statements, will be presented by Pat Hart.

6 MS. HART-JORGENSEN: Good morning. This
7 test claim arises from enactments or amendments of 32
8 budget-related Education Code sections, Government
9 Code section 3540.2, California Code of Regulations
10 Title 5, sections 15440 through 15446, as well as 17
11 California Department of Education management advisory
12 letters published between the period of 1986 through
13 1996.

14 The claimant alleges reimbursable
15 state-mandated costs for the activities performed by
16 school districts and county offices of education for
17 periodically preparing and submitting various budget
18 and financial reports to the state and for the County
19 Office of Education to ensure the reporting compliance
20 of school districts in their jurisdiction.

21 The test claim makes changes to budget and
22 financial statements. However, many of the statutes
23 under the test claim legislation either recodified or
24 reenacted provisions in existence immediately prior to
25 the enactment of the test claim legislation. In
26 addition, several of the named statutes were already
27 denied under two previous test claims, CSM 4356,
28 California School Accounting Requirements; and CSM

1 4389, Budgeting Criteria and Standards.

2 The analysis for the remaining statutes is
3 whether or not the individual claimed provisions are
4 reimbursable state mandates. The analysis generally
5 hinges on whether the claims section imposes a new
6 activity that was not required under prior law. Staff
7 finds that the basic requirements for schools to
8 engage in budgetary activities were contained in prior
9 law. However, staff finds that some of the activities
10 as set forth in pages TC-3 through TC-4 of the staff
11 analysis are new and impose costs mandated by the
12 state, thus constituting a reimbursable state mandate.

13 Staff recommends the Commission adopt the
14 staff's recommendations as set forth on pages TC-25
15 through TC-27.

16 Will the parties please state your name for
17 the record?

18 MR. PETERSEN: Keith Petersen, representing
19 Alameda County Office of Education.

20 MS. LOPEZ: Good morning. Leslie Lopez,
21 Attorney General's office on behalf of the Department
22 of Finance.

23 MR. TROY: Dan Troy with the Department of
24 Finance.

25 CHAIR PORINI: All right, Mr. Petersen,
26 would you like to begin?

27 MR. PETERSEN: Certainly.

28 As you can see from your binders, a lot of

1 -- a lot has been written on the test claim and
2 responses. We're at a point now where I disagree in
3 six or seven significant areas with the staff
4 analysis.

5 All but one of those areas have been decided
6 in staff's favor before, so I don't think we need to
7 belabor the process today and go over that again.

8 The last item pertains to the matter of the
9 staff advisories, the financial management advisories
10 from the Department of Education to the county office
11 and the school districts.

12 In this staff analysis, staff has made a
13 blanket finding that these financial management
14 advisories are not executive orders. If they are
15 found to be executive orders, they're reimbursable.

16 This finding contradicts staff's position on
17 every other test claim where this matter has arisen.
18 In previous test claims, staff has taken each fiscal
19 management advisory one by one and determined whether
20 their contents contained duties imposed by the state
21 as executive orders.

22 So in order to prevent this finding from
23 being on the record, I'd like to present it to your
24 regulations 1188.3, make oral application, that for
25 these two test claims the management advisory be
26 withdrawn without prejudice.

27 CHAIR PORINI: All right, comments from
28 staff?

1 MS. HART-JORGENSEN: Staff did address these
2 advisories, and that is found in the analysis on pages
3 TC-24 through TC-25.

4 Going through it, first of all, staff noted
5 that Education Code 33308.5 provides, in pertinent
6 part, "Program guidelines issued by the State
7 Department of Education shall be designed to serve as
8 a model or example, and shall not be prescriptive.
9 Program guidelines issued by the department shall
10 include written notification that the guidelines are
11 merely exemplary, and that compliance with the
12 guidelines is not mandatory."

13 Staff agrees with Mr. Petersen that there are
14 situations where even though this language may appear,
15 that something may end up being a mandate.

16 However, looking at the executive orders, of
17 the 13 that are still remaining, seven of them contain
18 the caveat that it shall not be -- are exemplary only
19 when compliance with them is mandatory. But staff
20 also notes that the majority of these advisories
21 merely summarize -- excuse me, the legislation they
22 have enacted the prior year and quoted almost verbatim
23 what the legislation was.

24 So I want to address the point that, yes,
25 staff did analyze it. They also included that with
26 all the materials here. And so staff thinks they were
27 analyzed. Staff has no problems with the fact that
28 they would be withdrawn and separated from this claim.

1 But can we do it at this time, since the hearing has
2 started?

3 CHAIR PORINI: Paula?

4 MS. HIGASHI: Regulation section 1188.3,
5 which Mr. Petersen cited, states that, "A claim may be
6 withdrawn by written application anytime before a
7 decision is issued or by oral application at the time
8 of hearing. If such application is made, the
9 Commission may issue a decision dismissing the claim."

10 So regarding those parts which Mr. Petersen
11 described, and I would need some clarification if he
12 was describing the executive orders, meaning the CDE -
13 -

14 MR. PETERSEN: The management advisories,
15 right.

16 MS. HIGASHI: -- advisories.

17 Or if he also included the regulations?

18 MR. PETERSEN: No, the regulations are
19 another issue.

20 MS. HIGASHI: Okay.

21 So he did state that he wished to withdraw
22 the CDE management advisories from the claim.

23 CHAIR PORINI: All right, and so from my
24 understanding, since this is new to me and I suspect
25 several of our other members, that then means that the
26 Commission would dismiss this part of the claim?

27 MS. HIGASHI: That's correct.

28 So what we would do is, if the Commission

1 were to approve this analysis today, it would approve
2 it with those sections relating to the management
3 advisories -- they would just be stricken from the
4 final Statement of Decision. There would be a
5 separate Statement of Decision, dismissing the other
6 sections -- those sections that he's withdrawn.

7 CHAIR PORINI: Ms. Lopez?

8 MS. LOPEZ: Thank you. If I could just
9 speak to that.

10 It's Finance's position that the Commission
11 should just go ahead and hear this entire test claim.

12 The matter has been thoroughly briefed. The claimant
13 stands in the position of like a plaintiff in a
14 lawsuit. It's their burden to go ahead and show why
15 the bulletins constitute a state mandate. The matter
16 has been briefed and it is ready for a decision. We
17 think the staff has thoroughly analyzed the matter,
18 too. So we would urge the Commission to just make a
19 decision on the entire test claim.

20 CHAIR PORINI: All right, questions from
21 members?

22 Yes, Mr. Robeck?

23 MEMBER ROBECK: I'd like to kind of run
24 through this -- rescroll through the --

25 CHAIR PORINI: Please do.

26 MEMBER ROBECK: -- the regulations, the
27 Commission regulations.

28 He does have the right to withdraw all or a

1 portion of any test mandate claim --

2 MS. HIGASHI: Yes.

3 MEMBER ROBECK: -- that has been submitted -

4 -

5 MS. HIGASHI: He has done that.

6 MEMBER ROBECK: -- prior to a final --

7 MS. HIGASHI: Prior to a final decision.

8 MEMBER ROBECK: Okay.

9 MS. HIGASHI: And he has done this before,

10 and it was a claim that -- it was one that I

11 presented.

12 MR. PETERSEN: Law enforcement agency

13 notifications.

14 MS. HIGASHI: It was one I had presented,

15 so I'm familiar with having done this before with

16 Mr. Petersen.

17 CHAIR PORINI: Can you give me a little more

18 information in that particular case? When we

19 dismissed it, then that meant that it could not come

20 back before us again?

21 MS. HIGASHI: No, he had -- by withdrawing

22 it, it was dismissed. So in terms of the

23 reimbursement period, based on the filing date, that

24 would be gone. But if a new claimant wanted to file

25 on the same management advisories, in the future, they

26 could, at which point in time the Commission could

27 consider them again.

28 CHAIR PORINI: All right, we have a request

1 by Mr. Petersen.

2 Ms. Steinmeier?

3 MEMBER STEINMEIER: Just a procedural
4 question. It doesn't require any action on our part
5 to recognize a dismissal of those particular elements
6 of this claim?

7 MS. HIGASHI: Well, what we would do is, we
8 would prepare a separate Statement of Decision --

9 MEMBER STEINMEIER: Okay, after?

10 MS. HIGASHI: -- dismissing it -- yes.

11 And it would come forward to you, detailing
12 that these have been part of this test claim and that
13 they're now being dismissed.

14 CHAIR PORINI: All right, Mr. Robeck?

15 MEMBER ROBECK: Why wouldn't we be making a
16 motion to sever?

17 MS. HIGASHI: That could be done, too, if
18 you had acted first. But since he withdrew --

19 MEMBER HALSEY: Could you read us that one
20 more time?

21 MS. HIGASHI: Certainly. It's 1188.3.

22 "A claim may be withdrawn by written
23 application anytime before a decision is issued or by
24 oral application at the time of hearing. If such
25 application is made, the Commission may issue a
26 decision dismissing the claim."

27 MEMBER HALSEY: So it's not as a right.
28 It's at the discretion of the Commission?

1 MR. TROY: (Nodding head affirmatively.)
2 MS. HIGASHI: (Nodding head affirmatively.)
3 CHAIR PORINI: Okay. Any other comments?
4 You've thrown us for a loop, Mr. Petersen.
5 MEMBER STEINMEIER: Well, I'm only concerned
6 about the procedure. I mean, I agree if he wants to
7 withdraw part of it, I don't have a problem with that.
8
9 I mean, that's his decision, and he's obviously made
10 it.
11 I just want to make sure that we're doing it properly,
12 so that in the final analysis, those are removed. And
13 I don't care if we need to take action now. That's
14 why I asked.
15 If we don't and we just accept it because
16 he's -- you know, he's fulfilled our rules, then
17 that's fine, too.
18 MEMBER SHERWOOD: One thing.
19 CHAIR PORINI: Mr. Sherwood?
20 MEMBER SHERWOOD: Keith, I guess would you,
21 once again, explain why you feel you need to do this?
22 Because, to me, once --
23 MR. PETERSEN: It's extraordinary.
24 MEMBER SHERWOOD: -- this decision is issued
25 today, once we make a decision, I don't think that
26 affects any prior decisions or any decision going
27 forward, quite frankly, if you come before us with
28 other items of this nature. So if I could hear your

1 thinking on that again.

2 MR. PETERSEN: I agree with you, as a matter
3 of statute, there's no precedent from one decision to
4 the other. I think as a matter of practice, there's
5 the weight of consistency which we use throughout --
6 I've been doing this for 11 years, and I've seen some
7 conditions for finding mandates, approval of mandates
8 based on past practices. So I'm very concerned about
9 what goes on the record.

10 I'm asking for this to be removed because I
11 don't want these findings on the record. They're
12 contrary to the way the Commission staff has
13 approached this issued before. I think it's bad law.

14 And inasmuch as staff is recommending that none of it
15 is reimbursable, I don't know that I'm losing
16 anything, as far as content.

17 I just don't want the bad law on your books
18 -- and which was the same reason we did it for the law
19 enforcement agency about seven years ago. I believe
20 you were there. We got caught up in some tangential
21 issues, and the client and I decided that that
22 particular subdivision wasn't critical, and we
23 withdrew it, and that eliminated several hours of
24 discussion.

25 MEMBER SHERWOOD: I think you're correct in
26 that.

27 CHAIR PORINI: All right, so do we need a
28 motion to accept Mr. Peterson's request?

1 MS. HIGASHI: I don't believe so. I believe
2 that if the staff recommendation is adopted, it would
3 be minus -- you know, with those sections severed that
4 address those particular provisions. And we would --
5 if the Commission wishes to have a Statement of
6 Decision placed on the next agenda, we would do it for
7 the dismissal, in order to memorialize it.

8 CHAIR PORINI: You know, I'm confused
9 because when you reread the regulation, it kind of --
10 it was made so that, in my mind, it would mean that we
11 would have to take a specific action. Is that --

12 Pat?

13 MS. HIGASHI: But that's on the decision.

14 MEMBER ROBECK: I move that the items in
15 question be severed from the test claim request and be
16 dismissed.

17 MEMBER STEINMEIER: I second it.

18 CHAIR PORINI: All right, we have a motion
19 and a second.

20 May I have -- is there further discussion?

21 May I have roll call?

22 MS. HIGASHI: Ms. Halsey?

23 MEMBER HALSEY: No.

24 MS. HIGASHI: Mr. Lazar?

25 MEMBER LAZAR: Aye.

26 MS. HIGASHI: Mr. Robeck?

27 MEMBER ROBECK: Aye.

28 MS. HIGASHI: Mr. Sherwood?

1 MEMBER SHERWOOD: Aye.

2 MS. HIGASHI: Ms. Steinmeier?

3 MEMBER STEINMEIER: Aye.

4 MS. HIGASHI: Ms. Porini?

5 CHAIR PORINI: Aye.

6 Thank you.

7 All right, Mr. Petersen, any --

8 MR. PETERSEN: As far as all the other

9 issues, I'm going to stand on my writings.

10 CHAIR PORINI: All right.

11 Ms. Lopez?

12 MS. LOPEZ: I believe Finance would just

13 reiterate its prior briefings and submit the matter.

14 CHAIR PORINI: Okay. Questions or comments

15 from members?

16 Ms. Steinmeier?

17 MEMBER STEINMEIER: This is an incredibly

18 complex analysis, and I want to thank the staff for

19 painstakingly going through all the items in question.

20 Even though I have some familiarity with these, I was

21 still taken aback by the complexity of it.

22 And I think, generally -- except for, of

23 course, Mr. Petersen wouldn't totally agree -- but

24 generally I think the analysis is correct. And I

25 intend, for one, to vote for it.

26 CHAIR PORINI: All right, any other comments

27 from members? Questions?

28 Do I have a motion?

1 MEMBER LAZAR: I'll move to accept the staff
2 recommendation.
3 CHAIR PORINI: All right, we have a motion.
4 MEMBER LAZAR: Yes, as amended.
5 CHAIR PORINI: All right, we have a motion.
6 MEMBER STEINMEIER: I'll second.
7 CHAIR PORINI: We have a second.
8 Is there further discussion?
9 All right, roll call.
10 MS. HIGASHI: Mr. Lazar?
11 MEMBER LAZAR: Aye.
12 MS. HIGASHI: Mr. Robeck?
13 MEMBER ROBECK: Aye.
14 MS. HIGASHI: Mr. Sherwood?
15 MEMBER SHERWOOD: Aye.
16 MS. HIGASHI: Ms. Steinmeier?
17 MEMBER STEINMEIER: Aye.
18 MS. HIGASHI: Ms. Halsey?
19 MEMBER HALSEY: No.
20 MS. HIGASHI: Ms. Porini?
21 CHAIR PORINI: No.
22 MS. HIGASHI: Motion carries.
23 CHAIR PORINI: That takes us to our next
24 item and it's in our next book.
25 MEMBER STEINMEIER: And our next book.
26 CHAIR PORINI: Let's, just a moment, change
27 binders here.
28 MS. HIGASHI: Item 6.

1 MS. HART-JORGENSEN: This test claim is
2 almost identical to the previous test claim, except it
3 applies to activities performed by county offices of
4 education associated with the preparation and
5 submission of various budget and financial reports to
6 the state.

7 Staff recommends that the Commission adopt
8 the staff's recommendation as set forth in pages 21
9 through 22 of the staff analysis. This analysis also
10 refers to the same management advisories.

11 So will the parties please state your name
12 for the record?

13 MR. PETERSEN: Keith Petersen, representing
14 Alameda County Office of Education.

15 MS. LOPEZ: Leslie Lopez, Attorney General's
16 office on behalf of the Department of Finance.

17 MR. TROY: Dan Troy, Department of Finance.

18 CHAIR PORINI: All right, Mr. Petersen?

19 MR. PETERSEN: I have the same requests
20 regarding this test claim as I did for the Item 5 test
21 claim. That's for the finding on the -- to withdraw
22 the management advisories of the State Department of
23 Education.

24 CHAIR PORINI: All right. So now I think we
25 understand the motion.

26 Are there any questions or comments from
27 members?

28 Mr. Robeck?

1 MEMBER ROBECK: I move to sever the
2 management advisory test claim request from the other
3 test claim request that has been submitted.

4 CHAIR PORINI: All right.

5 MEMBER STEINMEIER: I second that again.

6 CHAIR PORINI: We have a motion and a
7 second.

8 Is there any further discussion?

9 May I have roll call?

10 MS. HIGASHI: Mr. Robeck?

11 MEMBER ROBECK: Aye.

12 MS. HIGASHI: Mr. Sherwood?

13 MEMBER SHERWOOD: Aye.

14 MS. HIGASHI: Ms. Steinmeier?

15 MEMBER STEINMEIER: Aye.

16 MS. HIGASHI: Ms. Halsey?

17 MEMBER HALSEY: No.

18 MS. HIGASHI: Mr. Lazar?

19 MEMBER LAZAR: Aye.

20 MS. HIGASHI: Ms. Porini?

21 CHAIR PORINI: Aye.

22 All right. Would you like to add anything?

23 MR. PETERSEN: As to all of the issues, I'll
24 stand on my written applications.

25 CHAIR PORINI: All right, Ms. Lopez?

26 MS. LOPEZ: Very brief.

27 In addition to just reiterating Finance's
28 prior comments, there's two specific items -- it's on

1 pages 17 and 18 of the final staff report -- staff
2 analysis, excuse me. On page 18, there's five bullet
3 points. And Finance disagrees with the second and
4 fourth bullet point. Those deal with encumbering
5 contracts and other obligations and reporting the
6 payables and receivables. Those activities are just
7 standard duties that have always existed within
8 general accounting practices. And Finance has
9 confirmed that with Mr. Jeff Brownfield of the
10 Controller's office, who concurs with that conclusion,
11 so we would request that those two items be denied.

12 CHAIR PORINI: All right. Comments?
13 Questions?

14 MEMBER STEINMEIER: I'd like staff to
15 comment on it.

16 CHAIR PORINI: Yes.

17 MS. HART-JORGENSEN: This has to do with
18 when there's a determination that the county office of
19 education is unable to meet its financial obligations.
20 The requirement is new that under the circumstances,
21 that they would have to encumber all contracts and
22 other obligations, as well as to prepare appropriate
23 cash flow analyses. So the staff recommendation was
24 that this was something above and beyond the regular
25 budgeting, when it only happened when there was a
26 situation where it was deemed that they were unable to
27 meet the financial obligations for the current two
28 subsequent fiscal years. So it was on that basis,

1 that staff recommended that it be found to be a new
2 activity, since it was something above and beyond the
3 general reporting, as well as all the other activities
4 included in the bullets on page 18.

5 CHAIR PORINI: All right, Finance?

6 MS. LOPEZ: It's Finance's position that
7 those activities -- they're just underlying duties
8 that would have to be carried out, whether or not
9 there was a negative finding.

10 CHAIR PORINI: Okay, Mr. Petersen?

11 MR. PETERSEN: My response to that would be,
12 their reference to the State Controller's office is
13 about triple hearsay. And you've commented on the
14 complexity of this test claim and the work involved by
15 staff to make those fine distinctions between what was
16 business as usual and what was new.

17 And in this case, the staff has made that
18 distinction. These things are new actions required
19 because of the fiscal insolvency of the county office.

20 Encumbering all contracts is not something you do
21 every day, is my understanding. Encumbering all
22 contracts means you can't make payments on the
23 contract without permission, as opposed to making
24 payments according to
25 a purchase order. So it is a higher level of
26 scrutiny.

27 CHAIR PORINI: All right. Ms. Halsey?

28 MEMBER HALSEY: What about recording

1 receivables and payables though? Isn't that standard
2 practice?

3 MR. PETERSEN: Which item would that be?

4 I'm sorry.

5 MEMBER HALSEY: That's the fourth bullet.

6 CHAIR PORINI: Page 18, the bottom of the
7 page --

8 MR. PETERSEN: Right.

9 CHAIR PORINI: -- the five bullets.

10 MR. PETERSEN: I think what they're getting
11 at there is ascertaining that all receivables and
12 payables have been recorded, so you know how insolvent
13 you are.

14 CHAIR PORINI: Okay, I guess I'm confused.
15 Mr. Sherwood?

16 MEMBER SHERWOOD: It would seem like that
17 would be a standard action.

18 MR. PETERSEN: Yes.

19 MEMBER STEINMEIER: Keith, is it a separate
20 reporting requirement, though, above and beyond what
21 -- I mean, you have to do this activity, but is it
22 also a reporting requirement? Is that what the
23 recording refers to or is it just the normal course of
24 business? I guess that's the question.

25 MR. PETERSEN: This is a shopping list of
26 things that have to be done, once the county has been
27 determined to be insolvent.

28 MEMBER STEINMEIER: It triggers a reporting

1 requirement, essentially?

2 MR. PETERSEN: Yes.

3 MEMBER STEINMEIER: That's what this really
4 relates to, not the fact that you would do it. You
5 may already do it, but you have to report all of these
6 things separately as of that moment in time when
7 you're declared insolvent; correct? Not having had
8 the personal experience --

9 CHAIR PORINI: Let's ask Pat.

10 MEMBER STEINMEIER: Yes, let's ask Pat. Is
11 that what you --

12 MS. HART-JORGENSEN: It's my understanding
13 that this happens when there's a title relief placed
14 on the district. It's something above and beyond the
15 ordinary. They have to account much more closely than
16 they would have or whatever might have been the
17 general accounting provisions. Here, it's something
18 they have to get the reports and they'll actually be
19 monitored, to make sure that all efforts are being
20 done to make sure that they can cure the situation and
21 get back into solvency.

22 MEMBER STEINMEIER: So is this a reporting
23 requirement, or is it an activity that they already
24 do? I think that --

25 MEMBER SHERWOOD: I think that's the point -
26 -

27 MEMBER STEINMEIER: Right.

28 MEMBER SHERWOOD: -- because they already

1 record their receivables or payables.

2 MEMBER STEINMEIER: Well, if they're not,
3 that's why they're insolvent. That's a good point.

4 But assuming that they were doing that, this
5 is a reporting requirement?

6 MS. HART-JORGENSEN: This is a reporting
7 requirement, and it's recording other reporting.

8 MEMBER STEINMEIER: Yes.

9 MS. HART-JORGENSEN: It's recording of the
10 reporting, and they actually have the materials there
11 to submit them.

12 CHAIR PORINI: Mr. Troy?

13 MR. TROY: At the very least, Finance would
14 request clarification of the reimbursable costs in
15 that case, that we're not reimbursing them for
16 recording the receivables.

17 MS. HART-JORGENSEN: That would be on the
18 reporting of the recordation of all receivables; is
19 that what you're looking for?

20 MR. TROY: Yes, that would be everything.
21 We would appreciate that clarification.

22 MS. HART-JORGENSEN: Okay.

23 MR. PETERSEN: Actually, if you have a
24 moment, I'm looking for the particular code section --

25 MEMBER STEINMEIER: Please.

26 MR. PETERSEN: -- to see if that's any help
27 to us.

28 MS. HART-JORGENSEN: 1630.

1 MEMBER ROBECK: 1630?

2 MS. HART-JORGENSEN: It's not the actual
3 reporting.

4 MS. HIGASHI: Pat, it's right there.

5 MS. HART-JORGENSEN: Okay. Did you find the
6 page?

7 MR. PETERSEN: Okay. It's your Bates page,
8 I think, 156.

9 MEMBER STEINMEIER: Okay.

10 MR. PETERSEN: I don't know whether that
11 applies to all of it or just to the code sections.

12 I think Member Steinmeier is correct, this
13 is a result of -- and subdivision (a) indicates, "If
14 any time during the fiscal year the Superintendent of
15 Public Instruction determines the county office may be
16 unable to meet its financial obligations," and then
17 there's a whole list of things that have to be done
18 because of that.

19 MEMBER STEINMEIER: Including reporting
20 requirements.

21 MS. HART-JORGENSEN: And I find it here.
22 It's in 1630(a)(4): "Require the county office to
23 encumber all contracts and other obligations, to
24 prepare appropriate cash-flow analyses, and monthly or
25 quarterly budget revisions, and to appropriately
26 record all receivables and payables."

27 So this is a direction for what must be
28 done, and --

1 MEMBER SHERWOOD: In the report.

2 MS. HART-JORGENSEN: In the report, correct.

3 MEMBER ROBECK: It's a new report.

4 MS HART-JORGENSEN: Right.

5 MEMBER ROBECK: It's not part of the

6 standard process --

7 MS. HART-JORGENSEN: So all of these --

8 CHAIR PORINI: Ms. Lopez?

9 MS. LOPEZ: Well, the statute doesn't read

10 in terms of doing these activities and then reporting

11 to somebody that you've undertaken these activities.

12 The statute just says the superintendent shall, if

13 necessary, tell the county office to appropriately

14 record their receivables and payables. So it's just a

15 standard duty that they should have done, but there's

16 not a separate reporting requirement.

17 CHAIR PORINI: All right, Pat?

18 MS. HART-JORGENSEN: And it was staff's -- I

19 think the recommendation that it be changed to

20 "reported on recordation of all receivables and

21 payables." There's something that has to be included

22 in the report, so all of this material is together.

23 So the activities all listed are ones that must be

24 included

25 in -- they must be included in the report but they're

26 also the activities that must be done to compile this

27 report.

28 MEMBER SHERWOOD: Okay, so we can assume the

1 accounts receivables and payables had been recorded,
2 but now we're attesting in this report that they have
3 been?

4 MR. PETERSEN: Kind of like an audit, I
5 guess.

6 MEMBER ROBECK: It's preparing the report
7 that's submitted to the Superintendent of Public
8 Instruction, who then uses that information to make a
9 determination as provided in subdivision (b). If
10 after taking actions identified in subdivision (a),
11 the Superintendent of Public Instruction determines,
12 blah, blah, blah.

13 So it's preparing a report to the
14 Superintendent of Public Instruction for the basis of
15 making a determination as to the fiscal solvency of
16 that county.

17 MEMBER SHERWOOD: But, to me, that would
18 indicate, though, that they're going to attest to the
19 fact that they have appropriately made these accounts
20 payables and receivables. I mean, I would assume
21 they've been doing it all along as practice, and now
22 they're going to certify that they have done this in
23 this report.

24 MEMBER STEINMEIER: Right.

25 MEMBER ROBECK: That's part of the report
26 that's certified to the Superintendent of Public
27 Instruction.

28 CHAIR PORINI: All right, Ms. Halsey?

1 MEMBER HALSEY: Well, I'm just concerned if
2 the Commission were to approve this, would that mean
3 that we're subventing basic bookkeeping that should
4 already be funded?

5 MS. HART-JORGENSEN: This is something that
6 is in response -- again, there's a situation where
7 there was the insolvency of a school district. And
8 this is what they are being -- the reporting and
9 tracking that they're required to do.

10 MEMBER HALSEY: But there's nothing new
11 about them being required to record payables and
12 receivables. That's always been required.

13 MS. HART-JORGENSEN: Right. And that's --
14 there's no disputing of that. But what is new, is
15 having to get it together and be under the tighter
16 reins and included it in the report; and, as Mr.
17 Robeck indicated, to certify to that.

18 CHAIR PORINI: Mr. Robeck?

19 MEMBER ROBECK: Well, the actual statutory
20 language says, "To appropriately record all
21 receivables and payables." And that's probably the
22 preferred language that we should have in here, go to
23 staff and appropriately prepare. That would imply a
24 task of reviewing and call it your receivables; right?

25 MEMBER HALSEY: But not initially recording.

26 MEMBER ROBECK: Not initially recording. It
27 doesn't say "initially recording." It says,
28 "Appropriately record." We need to change the

1 language in the bullet to reflect the statute.

2 MEMBER STEINMEIER: Right.

3 CHAIR PORINI: Okay, other questions or

4 comments? Okay.

5 MEMBER STEINMEIER: I guess I have one.

6 CHAIR PORINI: Yes.

7 MEMBER STEINMEIER: Pat, we need to revise

8 this bullet before we approve this. So we're going to

9 have to have some actual language.

10 MS. HART-JORGENSEN: Right.

11 MEMBER STEINMEIER: I don't mean to put you

12 on the spot.

13 MS. HART-JORGENSEN: No, I know we are. And

14 did you want to try and do it now or --

15 MEMBER STEINMEIER: Well, at some point

16 before a motion is made, I think --

17 MS. HART-JORGENSEN: Okay, okay.

18 MEMBER STEINMEIER: -- so we know what we're

19 --

20 MS. HART-JORGENSEN: We know that imposes a

21 new program of higher level of service, but only for

22 the following activities. That would be -- and

23 probably the sentence should be, at the end: "in

24 compliance with the obligations under 1630(a)(4)"?

25 Does that help?

26 MEMBER STEINMEIER: Actually reference the

27 law?

28 MS. HART-JORGENSEN: Yes, the law,

1 1630(a)(4).

2 MEMBER STEINMEIER: And that's the revised
3 one.

4 MEMBER ROBECK: And then you would strike
5 the rest of the bullet points?

6 MS. HART-JORGENSEN: I think that that would
7 take care of it because it's all the activities that
8 are in there. And then it would address it in the P's
9 and G's, the Parameters and Guidelines, which would be
10 what is specifically reimbursable.

11 But that was the gist here of the staff's
12 recommendation that this is something new, it's a
13 higher level that they have to answer to report. So
14 it's not necessarily the counting, it's the proof of
15 the accounting and probably the proof that they are
16 implementing changes to make their position better.

17 MEMBER STEINMEIER: Mr. Petersen, is that
18 satisfactory to you?

19 MR. PETERSEN: Right, yes.

20 One of the problems that we have is, this
21 test claim applies to county office fiscal insolvency,
22 which hasn't happened yet. The other test claim --

23 MEMBER STEINMEIER: Not since this
24 legislation.

25 MR. PETERSEN: The other test claim applies
26 to school districts. And it's all part of the AB-1200
27 effort of 1992. And that's happened at Richmond, for
28 sure. I'm not sure, Oakland's in and out, perhaps.

1 But there's some experience there.

2 Here, we're speculating what the format is
3 going to look like, if it occurs.

4 MEMBER STEINMEIER: So we need to write it
5 as broadly as we can, to make sure that it -- or
6 reference the law, which would be --

7 MR. PETERSEN: Yes, I think that's fine.

8 MEMBER STEINMEIER: So you concur with what
9 Pat's done?

10 MR. PETERSEN: Yes.

11 MEMBER STEINMEIER: Thank you.

12 CHAIR PORINI: All right. Questions or
13 comments from members?

14 Is there a motion?

15 MEMBER STEINMEIER: Yes, move the amended
16 staff analysis recommendation.

17 MEMBER ROBECK: Second.

18 CHAIR PORINI: We have a motion and a
19 second.

20 Is there further discussion?

21 May I have roll call?

22 MS. HIGASHI: Mr. Robeck?

23 MEMBER ROBECK: Aye.

24 MS. HIGASHI: Mr. Sherwood?

25 MEMBER SHERWOOD: Aye.

26 MS. HIGASHI: Ms. Steinmeier?

27 MEMBER STEINMEIER: Aye.

28 MS. HIGASHI: Ms. Halsey?

1 MEMBER HALSEY: No.

2 MS. HIGASHI: And Mr. Lazar?

3 MEMBER LAZAR: Aye.

4 MS. HIGASHI: And Ms. Porini?

5 CHAIR PORINI: No.

6 MS. HIGASHI: The motion carries.

7 MS. HIGASHI: This brings us to our small
8 binder.

9 CHAIR PORINI: Another binder-switch, guys.

10 Oh, don't we have to do Item Number 15? I'm
11 sorry. Don't we have 15, and we have one that was
12 taken off consent?

13 MS. HIGASHI: We have Item 14 --

14 MEMBER LAZAR: 10 wasn't taken off?

15 MEMBER STEINMEIER: 15 was on consent.

16 MEMBER ROBECK: 15 is not on consent.

17 MS. HIGASHI: No, we will next go to Item 14
18 and Item 15, and the remaining items.

19 Item 14 is the adoption of the Proposed
20 Parameters and Guidelines for the Seriously and
21 Emotionally Disturbed Pupils Out-of-State Mental
22 Health Services test claim. This item had previously
23 been on the proposed consent calendar. And we had a
24 request from the State Controller's office that the
25 item be removed. And I understand that the State
26 Controller's representative and the claimant have been
27 in discussions regarding an amendment that might be
28 made to this draft that would satisfy the Controller's

1 office's concerns.

2 CHAIR PORINI: All right.

3 MS. HIGASHI: Would the parties please state
4 their names for the record?

5 MR. KAYE: Leonard Kaye, County of Los
6 Angeles.

7 MS. MCGUINN: Jesse McGuinn, Department of
8 Finance.

9 MR. SILVA: John Silva, State Controller's
10 Office.

11 CHAIR PORINI: All right, can we
12 short-circuit this, Mr. Kaye? Have you come to an
13 agreement?

14 MR. KAYE: Well, let me just present you
15 with a brief understanding of the agreement without
16 committing the State Controller's office, because I
17 would think they would need an opportunity to make
18 sure that I artfully stated our understanding.

19 There appears to be one -- one area that
20 needs clarification in our P's and G's, and it has to
21 do, on page three of the P's and G's themselves, it
22 has to do with the phrase under "Case Management."
23 Now, this relates to specific activities related to a
24 particular child. We're talking about administering
25 psychotropic medications, litigation arising under
26 that.

27 What appears to need much greater
28 clarification is the phrase under 2, Case Management,

1 at the very end, "Including the cost of case-specific
2 litigation over mental health treatment and/or
3 psychotropic administration issues."

4 Now, I think a quick and equitable solution
5 to this is simply for us to delete that phrase from
6 the
7 P's and G's, and to work with the State Controller's
8 office to come up with an amendment to these P's and
9 G's at some future time that would specify the
10 particular types and conditions for reimbursement of
11 litigation.

12 Thank you.

13 CHAIR PORINI: All right, Controller's
14 office, and then Finance.

15 MR. SILVA: The proposed change to strike
16 out that language would address our concern that that
17 be considered rather broad and cover all types of
18 litigation costs which may not truly be mandated by
19 the state and by the legislation in question.

20 I think that's a reasonable solution that we
21 can get together later and see if we can craft a more
22 narrow clause that covers only that litigation that is
23 required by the legislation and the treatment for the
24 child.

25 CHAIR PORINI: Finance?

26 MS. MCGUINN: We are concerned that we only,
27 just this minute, learned what the facts of the
28 concern of the Controller were. And because we have

1 not had an opportunity to take a look at what their
2 concerns are and what this discussion and negotiation
3 is about, we are not prepared to agree to any change
4 until we have an opportunity to take a look at what
5 these issues are.

6 CHAIR PORINI: Okay, Mr. Kaye?

7 MR. KAYE: In the alternative then, comma, I
8 recommend that the staff recommendation be adopted as
9 written.

10 Thank you.

11 MR. SILVA: I think based on --

12 CHAIR PORINI: Mr. Silva?

13 MR. SILVA: I'm sorry. I think then our
14 concern would be that the language is too broad; that
15 the term "case-specific litigation" could potentially
16 include suits over misconduct, malpractice,
17 potentially intentional torts. And I don't think that
18 that would be covered; that the state is not an
19 insurance -- a litigator/insurer for the counties for
20 any misconduct they may engage in. I think that,
21 therefore, the language being too broad with the P's
22 and G's, as written, should be rejected.

23 CHAIR PORINI: Perhaps Members will indulge
24 me. I think, Mr. Kaye, that my
25 recommendation to you would be that we hold this item
26 over for one month, so that all the parties can get
27 together and talk about it. I think that would
28 probably be the better course of action. Is that all

1 right with you?

2 MR. KAYE: Yes. I would respectfully
3 request that at a date certain we receive a detailed
4 written analysis of a legal basis for whoever is
5 concerned over this, if that would be possible.

6 MS. HIGASHI: I'll meet with the parties
7 after the hearing to set those dates.

8 MR. KAYE: Okay, thank you.

9 CHAIR PORINI: All right, thank you very
10 much.

11 That takes us to Item Number 15.

12 MEMBER LYNCH: Item Number 15 is proposed
13 amendment to Parameters and Guidelines, School Bus
14 Safety I and II. This item will be presented by
15 Camille Shelton.

16
17 CAMILLE SHELTON: This item involves a
18 request to amend the Parameters and Guidelines for the
19 School Bus Safety Program. Clovis Unified School
20 District requests that the reimbursement period in the
21 Parameters and Guidelines be changed to allow
22 reimbursement for start-up costs incurred by school
23 districts from the enactment date of the statute,
24 which is October 7th, 1997, rather than from the
25 effective and operative date of the statute, January
26 1, 1998.

27 Staff recommends that the Commission deny
28 this request. Both the California Constitution and

1 the courts have explained that a statute has no force
2 or effect for any reason until the operative and
3 effective date.

4 In this case there is no dispute that the
5 effective and operative date of the test claim statute
6 is January 1, 1998. Moreover, there is no indication
7 that the Legislature intended that school districts
8 comply with the test claim statutes before January 1,
9 1998. Certainly the Legislature has the power to set
10 the operative date of the statute later than the
11 effective date. In such a case, school districts
12 would be entitled to start-up costs before the statute
13 becomes operative as law. However, the Legislature
14 did not establish a future operative date here.

15 Will the parties please state their names
16 for the record?

17 MR. MCGUIRE: Bill McGuire, representing
18 Clovis Unified School District.

19 MR. CUNNINGHAM: Jim Cunningham with San
20 Diego Unified School District, interested party.

21 MR. AGUILERA: Matt Aguilera, Department of
22 Finance.

23 CHAIR PORINI: All right, Mr. Cunningham,
24 would you like to begin?

25 All right.

26 MR. MCGUIRE: Actually, I will.

27 CHAIR PORINI: Mr. McGuire?

28 MR. MCGUIRE: I'm the associate

1 superintendent for Clovis Unified School District, and
2 I'm certainly not here as a mandate expert. You all
3 govern the process; but I really, truly believe in my
4 heart, that this process is run by lawyers and cost
5 accountants and really not by the people involved in
6 it.

7 My comments today really relate to a school
8 district and our focus on students. The stated goals
9 of Clovis Unified School District are student
10 achievement and ensuring the student safety.

11 You know your business better than I do, and
12 I'm sure the staff report is based upon the
13 Constitution and the current state statutes. But,
14 really, what we want to talk about is reasonableness
15 and intent.

16 The Legislature and the Governor approved
17 this bill to ensure that another child would not die
18 in California related to a school bus incident. The
19 intent was for school districts to change our policies
20 and inform our drivers of new practices, to ensure
21 student safety on January 1st of 1998.

22 As citizens and taxpayers and perhaps
23 parents of young children, I'm sure you would not want
24 us to have school bus drivers violating the law on
25 January 1st of 1998. The California Highway Patrol
26 informed our district that enforcement would occur on
27 the first day back from winter break, which was
28 January 2nd of 1998.

1 Now, imagine, if you can, that you are a
2 governing board member of a school district and, God
3 forbid, another child would happen to be injured or
4 killed on January 2nd. And our excuse was, we were in
5 the process of implementing the law.

6 Clovis Unified School District really
7 appreciates the fact that you saw in your wisdom to
8 grant this as a mandate and approve the Parameters and
9 Guidelines. Our contention is that what we did was do
10 exactly what you had already approved. The issue is,
11 we started 83 days before January 1st of 1998, one day
12 after the Governor signed the law. And the majority
13 of this activity was during the month of December
14 1997, 30 days before the law went into effect.

15 Now, I know this is not a mandate issue that
16 I'm going to give you an example; but the Department
17 of Finance is required by law each year to have the
18 state budget from the Governor on January 10th. Now,
19 does that mean that they start on January 10th to do
20 the state budget? No, they start in October; they
21 start in November. They probably start a lot earlier
22 than that.

23 In our district, we use the adage that says,
24 "You feed the rabbits and you starve the snails." If
25 you take this action and approve the staff analysis,
26 you're doing just the opposite. You're penalizing
27 school districts that tried to be in compliance with
28 the law and the intent of the law of January 1.

1 Once again, I'm not an expert in mandated
2 costs. I'm here speaking as a school district
3 representative. And I hope that the staff analysis is
4 based upon the Constitution and the statutes of the
5 state; but we also have to take into account
6 reasonableness and to the intent of what the
7 Legislature really meant. Did they really mean for us
8 to have a phase-in period that said, "Take 30, 60, 90
9 days and the CHP will enforce it maybe in March?" No,
10 they said it would be enforced on January 1st of 1998.

11 Would you want school bus drivers, those
12 people in those big, yellow buses, violating the law
13 on
14 January 1st, which is what we had.

15 Thank you -- would have had, excuse me.
16 Thank you.

17 CHAIR PORINI: All right, Mr. Cunningham?

18 MR. CUNNINGHAM: Thank you.

19 Commission staff was of the opinion that the
20 Commission's earlier decision to exclude reimbursement
21 for the start-up costs wasn't based upon a
22 misinterpretation of the statutes that govern the
23 Commission. After reading the transcript, I'm not
24 convinced that's the case.

25 There were concerns by many of the members
26 that you were somehow precluded by the Commission
27 statutes from approving these, what we'll call
28 "start-up costs." And the only statute that was

1 discussed at that hearing was the Government Code
2 section 17565.

3 I think at the hearing, and I'm hearing
4 today, that the staff agrees that is not a basis for
5 denying costs. In fact, there is no statute that
6 precludes you from approving these costs.

7 On the contrary, the California Constitution,
8 in Article XIII B, section 6, requires you to approve
9 -- or that requires that the state reimburse school
10 districts and other local governments for the costs of
11 a new program. And it doesn't speak about when those
12 costs were incurred.

13 We're not arguing that the statute was
14 effective someday before January 1st. Clearly, it was
15 not; but that's not the issue. The issue was in order
16 to comply with that statute, was it reasonable for
17 school districts to incur the costs to train their
18 drivers and do the other things they needed to do to
19 be in compliance with the law on January 1st, prior to
20 January 1st.

21 I think the California constitutional
22 provision that is now cited by staff has nothing to do
23 with mandates. Its purpose was to assure a period of
24 about
25 90 days for the voters, or the people of the State of
26 California to bring a referendum, if they chose to, in
27 order to preclude that law from going into effect.

28 In this instance that didn't happen. This

1 law did go into effect. The only question is -- and
2 these costs you have determined are reimbursable if
3 they were incurred after January 1st. What we're
4 saying is that your regulations should provide, in the
5 Parameters and Guidelines, the most reasonable means
6 of complying with the statute. The most reasonable
7 means of complying with this statute was to assure
8 that your school bus drivers were properly trained;
9 that your transportation plan was in place on January
10 1st, to preclude them from being cited for violating
11 the law.

12 And we'd ask that you approve the Clovis
13 recommendation or their request for an amendment of
14 the Parameters and Guidelines.

15 CHAIR PORINI: Questions or comments?

16 Do we want to hear Finance or -- are these
17 general comments or --

18 Finance?

19 MR. AGUILERA: We concur with the staff
20 recommendation due to the fact that the Education Code
21 does not require local agencies to begin activities
22 prior to the statute's operative date.

23 CHAIR PORINI: Okay, now, comments?

24 John?

25 MEMBER LAZAR: This would just be a gap
26 measure then. If we assented to the claimant's
27 request, would it be a resolution of this gap period?

28 CHAIR PORINI: Pat? Camille?

1 MS. HART-JORGENSEN: You talk about a gap.
2 As we indicated in the -- and the testimony will
3 indicate, which I indicated, typically you're not
4 required to follow a new statute until after the
5 operative date. I don't think that there's really any
6 authority to allow for the start-up costs. And this
7 is also taking into consideration the fact that there
8 are some statutes where they have -- where they
9 authorize for immediate enactment. So there was
10 nothing there to indicate of its urgency; that it
11 should be followed immediately.

12 But staff is not agreeing or disagreeing
13 whether that should have been done; but the point
14 being is that there's nothing in the mandates law
15 which allows for start-up costs, unless there is --
16 between the time of the enactment, from the date that
17 it's signed by the Governor until the actual enactment
18 date, which in this case was January 1st.

19 CHAIR PORINI: I think, in looking at the
20 transcript, too, Joann, you made several comments the
21 last time.

22 MEMBER STEINMEIER: Yes.

23 CHAIR PORINI: Mr. Cunningham?

24 MR. CUNNINGHAM: Staff says there's nothing
25 that authorizes you to approve those, but it's also
26 true, there's nothing that precludes you from
27 approving those costs.

28 MEMBER SHERWOOD: Madam Chair?

1 CHAIR PORINI: Yes.

2 MEMBER SHERWOOD: May I ask Camille to make
3 a comment on that?

4 CAMILLE SHELTON: The Commission is required
5 to follow the requirements of the California
6 Constitution. And the court's interpreting the
7 constitutional provision in Article IV, section 8,
8 have all held that those statutes have no force or
9 effect, for any reason, until the operative or
10 effective date.

11 CHAIR PORINI: Does that answer your
12 question?

13 Okay, all right. Somebody's late to the
14 table again, Mr. Burdick.

15 MR. BURDICK: I know, you could have it done
16 except for me.

17 Madam Chair, Members of the Commission,
18 Allan Burdick on behalf of the California State
19 Association of Counties.

20 And I apologize, I don't know the cite; but
21 when you adopted your regulations for governing the
22 Commission -- and I think Bill was the only one that
23 was there at the time -- we asked for a provision
24 there which would allow for the Commission to have
25 some discretion over issues that are in the nature of
26 interpretation, because we were concerned about the
27 fact that we were making decisions very often on some
28 very fine technicalities. And this is a quasi-

1 judicial process. Quasi. I keep asking where the
2 "quasi" is, and nobody can seem to answer me where the
3 "quasi" is.

4 When this process was established, it was a
5 battle between the folks and analysts like Annette and
6 the attorneys, and the analysts won. I would have to
7 say that the process now, the attorneys have won.

8 But this still says "quasi-judicial
9 process." And there is a place in the regulations
10 that -- and I remember Terry was the -- and I
11 apologize, Terry Parker was the chair at the time when
12 we adopted those, and we allowed the Commission to
13 have some discretion because you are the group that
14 makes the determination.

15 Now, when this issue was heard before by
16 prior commissions, and one of them -- and it may have
17 been the Board of Control -- and one of them did allow
18 for costs, and the issue was -- well, Finance's
19 position at the time was, it could be repealed or a
20 referendum during that period of time because the
21 Legislature often comes back in December, particularly
22 in certain years, and they do have the opportunity --
23 well, after anything is signed to come back into
24 session and to overrule the Governor's decision on a
25 bill.

26 And the argument was from local government,
27 "Well, if they did that, they're doing that at their
28 own discretion during that period of time." But then

1 if -- because that's just government. If it's
2 repealed, they're out of luck, or they wouldn't get
3 reimbursed for those particular costs.

4 But if they don't repeal it, then they
5 wouldn't be. And the Commission did find -- I know I
6 believe one was in the City of Los Angeles case that
7 had to do with Filipino surveys -- Filipino employee
8 surveys. And I believe there was another case in
9 which, in both cases, they found that local agencies
10 needed to proceed immediately if they were going to be
11 able to comply with the requirements by January 1.
12 And they were awarded costs between the date that the
13 bill was signed until the date that it was effective
14 on January 1.

15 So there is some history. And I do believe
16 that in there, there is some provision in your
17 regulations that does allow you to have that
18 discretion, because you are the folks who have been
19 granted the exclusive authority for interpreting the
20 Constitution.

21 And I would totally agree with Mr. Cunningham
22 that it's your role and your interpretation of how you
23 see the Constitution.

24 CHAIR PORINI: All right, Camille, you want
25 to respond?

26 CAMILLE SHELTON: I believe the regulation
27 that Mr. Burdick is referring to is 1183.1. And it
28 does allow or authorize the Commission to have

1 discretion, but only concerning the reimbursable
2 activities, not concerning the reimbursement period.

3 The regulation states that, "You must
4 describe the specific costs and types of costs that
5 are reimbursable, including one-time costs and ongoing
6 costs, and a description of the most reasonable
7 methods of complying with the mandate."

8 CHAIR PORINI: I think that probably gets us
9 back to Joann's original statement in the transcript,
10 about needing clarification in the Legislature.

11 MEMBER STEINMEIER: Yes. I actually had a
12 sign up here saying, "Get me to the Legislature."

13 This is one of those things where you want
14 to be able to find some basis to do it because there
15 was no urgency, that was a mistake. That law should
16 have had an urgency clause in it because districts
17 felt compelled to do that. But it's not there. So
18 we're looking for some basis.

19 I have a question for you, Mr. McGuire, from
20 Clovis. Did you have any communications with any
21 state agency, i.e. the CHP, California Highway Patrol,
22 our any other organization, especially if they put it
23 in writing? That would have been very helpful here.
24 Did that happen?

25 MR. MCGUIRE: Yes, actually, we did not --
26 we researched our records for that in detail. We did
27 not have it in writing, but we have an excellent
28 school bus driver person in our district office who

1 did come to our district and conduct a mini-in-service
2 on that, on that day, on a day before January 1.

3 And, you know, we can do this 57 different
4 ways. The issue has come back to what I said: This
5 is about lawyers and cost accountants; it's not about
6 having reasonableness to help a school district that
7 tried to do a good job.

8 And all I can do is ask that you take that
9 quasi-judicial nature and look at Clovis Unified and
10 the rest of the school districts that tried to
11 implement the law.

12 MEMBER STEINMEIER: I'd love to push the
13 limits here. As a school board member, trust me, the
14 temptation is great. But at the same time, we have to
15 have something to hang our hat on. And as a
16 commissioner, that's the other part of my role.

17 And you're not the first situation where
18 you've been asked to fund start-up costs.

19 I think this case, though, probably had --
20 because of student safety -- had a very strong reason.

21 And that's why I have a lot of sympathy for your
22 position. At the same time, I'm looking for something
23 I can justify my position on. And, unfortunately, I
24 don't have anything, and you haven't given us anything
25 that would have done that.

26 And I know our school district did exactly
27 what yours did. I mean, we got on this right away.
28 We did not want to have any -- we didn't want to be

1 accused of not having complied with the law,
2 especially if we had an accident, which, fortunately,
3 with the help of God, that didn't happen. But we do
4 worry about those things.

5 And I don't know that these changes -- well,
6 they're important, but I don't think, for us, it
7 changed a whole lot of what we're doing; we just got
8 more careful about what we were doing.

9 So I guess, in summary, although I
10 understand the start-up costs issue as well as the
11 safety issue in this case, but we don't have anything
12 to work with and the Legislature has not given us
13 anything to work with, or the State Constitution.

14 CHAIR PORINI: All right, other comments by
15 members?

16 Do I have a motion?

17 MR. BURDICK: Maybe while the members are
18 contemplating, I'll take one more shot at Member
19 Steinmeier.

20 MEMBER STEINMEIER: It won't do any good,
21 but go ahead.

22 MR. BURDICK: And, again, I think on the
23 regulation, when we're looking at that, it doesn't
24 discuss the period, because I think at that point
25 people weren't really focusing on it. What we wanted,
26 was to allow the discretion of the Commission to look
27 at that, to make reasonable decisions. And we were
28 talking about activities. And this is an activity.

1 And we didn't say, well, is it before or after? We
2 didn't get into that level. But we clearly wanted to
3 give the Commission discretion, if they saw something
4 that should be reimbursable, which I think many of you
5 are looking at now and say, "Yeah, this should be
6 reasonable." But that could be found.

7 And we were trying to keep the quasi, if you
8 will, in the process, and to give the discretion.

9 So while Camille points out it didn't say
10 "period," it doesn't preclude "period," either.

11 And I would say from the person who made the -- who
12 was the one that proposed we do something of that
13 nature -- I didn't draft it. It's a little bit like -
14 - and I know that Annette and many of you have gone
15 through this -- you say to alleged counsel, "This is
16 what we want," and everybody agrees and it gets
17 drafted. And you think that's what it says, but then
18 later on the attorneys come back and say, "No, that's
19 not what it says. You've got to do cleanup
20 legislation."

21 But I would say that was the intent, is to
22 give you that discretion. And I don't -- and I think
23 that section gives you the discretion to say, "Yeah,
24 we can look at that," and you do have that. And,
25 again, your job is to interpret the Constitution. And
26 you're the sole and exclusive body. You're the people
27 we've got to come to.

28 And so I do think, Joann, that that does

1 give you discretion. It doesn't preclude you -- and I
2 can clearly say that was the intent. I don't know
3 whether Bill wants to comment on this or not because
4 he was the only one there at the time. I don't know
5 if he recalls it. I mean, we've had so many hearings
6 but --

7 MEMBER SHERWOOD: That was a few years ago.

8 MR. BURDICK: It's been a few years.

9 MEMBER SHERWOOD: Well, I think we all have
10 some discretion, as we sit up here as individual
11 members, as we look at these issues because nothing's
12 really black and white in many cases.

13 MR. BURDICK: Yes.

14 MEMBER SHERWOOD: However, I think, in my
15 experience -- and I hate to bring this in -- but I
16 think each issue have been looked at anew. But if I
17 go back over the last six years, I would say when
18 issues similar to this have come up, the Commission
19 has voted not to go back and recognize those costs
20 prior to the actual date of the legislation going into
21 effect.

22 Now, that doesn't mean that these members
23 here today cannot look at what is before them and make
24 their own decision; but personally, I've had a problem
25 seeing where there's a legal way that I can do that
26 under the current situation.

27 Now, I know there's differences of opinion
28 on this. I've heard them on various occasions. But

1 in my particular case, I happen to be in agreement
2 with Camille.

3 CHAIR PORINI: And I think, just adding one
4 more voice to that, I think we're all sympathetic and
5 concerned about the safety of children. But we're
6 still in the same quandary, I think, that minus a
7 legislative change, I can't get there.

8 So let me try again. Are there further
9 questions or comments? Do we have a motion?

10 MEMBER ROBECK: I move to approve the staff
11 recommendation.

12 CHAIR PORINI: All right, we have a motion.
13 Do I have a second?
14 Is there a second for the motion?

15 MEMBER LAZAR: Second.

16 CHAIR PORINI: We have a motion and a
17 second. Is there further discussion?
18 All right, may I have roll call?

19 MS. HIGASHI: Mr. Sherwood?

20 MEMBER SHERWOOD: Aye.

21 MS. HIGASHI: Ms. Steinmeier?

22 MEMBER STEINMEIER: Reluctantly, aye.

23 MS. HIGASHI: Ms. Halsey?

24 MEMBER HALSEY: Aye.

25 MS. HIGASHI: Mr. Lazar?

26 MEMBER LAZAR: Aye.

27 MS. HIGASHI: Mr. Robeck?

28 MEMBER ROBECK: Aye.

1 MS. HIGASHI: Ms. Porini?

2 CHAIR PORINI: Aye.

3 MS. HIGASHI: Motion carries.

4 CHAIR PORINI: Thank you.

5 MS. HIGASHI: This brings us to Item 18,

6 Adoption of Proposed Regulatory Action. This item

7 will be presented by Pat Hart.

8 CHAIR PORINI: All right. Next issue?

9 MS. HART-JORGENSEN: In February 2000, the

10 Commission initiated a rulemaking proposal to

11 establish procedures for dismissal of a pending

12 action, postponed or placed on inactive status at the

13 request of a party or claimant which is not

14 reactivated within one year from the date of the

15 postponement or placement on inactive status.

16 On June 29th, 2000, the Commission conducted

17 a public hearing on rulemaking proposal, which

18 coincided with the expiration of the 45-day public-

19 comment period. Based on the comments received during

20 the public-comment period, the staff amended the

21 proposed recommendations to: Number one, extend the

22 time for notice of a dismissal of the test claim from

23 60 days to 150 days; provide that, in the case of a

24 dismissal of a test claim, notice shall be made to all

25 potential claimants; clarify that another local agency

26 or school district may substitute in as a test

27 claimant; provide that notice of all dismissals shall

28 be posted electronically; and to provide the

1 postponements made by the Commission or other state
2 agency, and postponements made pending the outcome of
3 a similar test claim issue, either before the
4 Commission or the courts, shall not be included in
5 determining whether a test claim has been postponed or
6 placed on inactive status for more than one year.

7 At the August 24th hearing, the Commission
8 further modified text. On August 25th, 2000, the
9 proposed regulations, as modified, were mailed to all
10 commentators and interested parties. The 15-day
11 public-comment period closed on September 11th, 2000,
12 and no comments were received during this 15-day
13 comment period.

14 Accordingly, staff recommends that the
15 Commission adopt the proposed regulatory text which
16 can be found starting on page SA-3.

17 CHAIR PORINI: All right, do we have any
18 comments or questions?

19 MS. HART-JORGENSEN: I don't see that anyone
20 has come up to the table. And, again, as I indicated,
21 there were no comments during the public-comment
22 period. So assuming that there are no issues with it.

23 CHAIR PORINI: So do we need a motion or do
24 we simply need to give you directions that --

25 MS. HIGASHI: You have to --

26 CHAIR PORINI: All right.

27 MEMBER STEINMEIER: Then I'd like to move
28 approval of the regulation changes as indicated in

1 the --

2 MS. HIGASHI: Adoption?

3 CHAIR PORINI: Yes?

4 MS. HIGASHI: I'd like to clarify.

5 Ms. Steinmeier, you move adoption of the

6 regulations --

7 MEMBER STEINMEIER: I move adoption.

8 Correct, adoption, as the staff has recommended.

9 CHAIR PORINI: So we have a motion. Do I

10 have a second?

11 MEMBER ROBECK: Second.

12 CHAIR PORINI: We have a second. Is there

13 further discussion?

14 All those in favor, indicate with "aye."

15 *(A chorus of "ayes" was heard.)*

16 CHAIR PORINI: Opposed?

17 There are none. The motion carries.

18 MEMBER STEINMEIER: I'm still stunned there

19 was no comments.

20 CHAIR PORINI: Yes.

21 MEMBER STEINMEIER: Are we totally off base

22 or are we right on target?

23 CHAIR PORINI: I think that staff has done a

24 good job working with our various constituent groups,

25 so that there's been agreement on these much-needed

26 regulatory changes. I think that's what we're seeing.

27 MEMBER STEINMEIER: Thank you, Madam Chair.

28 I agree.

1 MS. HIGASHI: This brings us to Item 19,
2 staff report on public comment and proposed
3 modifications. This item will be presented by David
4 Scribner. This is the other rulemaking.

5 MR. SCRIBNER: In February 2000 the
6 Commission initiated a rulemaking proposal to amend
7 several sections of its regulations. The proposed
8 action is necessary to interpret, implement and make
9 specific statutes of 1999, Chapter 643, also known as
10 AB 1679.

11 On July 27th, 2000, the Commission conducted
12 a public hearing on the rulemaking proposal which
13 coincided with the expiration of the 45-day public
14 comment period. Staff agreed with some of these
15 suggestions that were provided, as reflected in the
16 proposed modified text presented to the Commission at
17 last month's hearing.

18 At this hearing, the Commission approved
19 staff's proposed modifications, and the modified text
20 went out for an additional 15-day public-comment
21 period, which closed on September 11th, 2000.

22 The Commission received comments from Girard
23 & Vinson and the State Controller. The comments
24 received by Girard & Vinson raise questions concerning
25 the Commission's process for accepting multiple test
26 claims based on the same statute. Based on these
27 comments, staff reviewed the proposed modification of
28 section 1183 related to the test claim filings, as

1 well as other sections included in the rulemaking
2 package.

3 In conclusion, that you properly addressed
4 the amendments made to the Government Code by AB 1679,
5 additional amendments to the existing regulations are
6 required. Therefore, staff has removed the majority
7 of the regulation sections from this rulemaking
8 package to ensure that all sections that may be
9 affected by the amendments to the Government Code by
10 AB 1679 are adequately addressed.

11 Staff will further define those regulation
12 sections that require modification and will submit to
13 the Commission a request for a new order to initiate
14 rulemaking to address these issues. Staff has
15 retained the proposed modification at section 1188.4
16 relating to the Commission's reconsideration of prior
17 final decisions, to ensure that the Commission has
18 adequate time to consider future requests for
19 reconsideration. Therefore, staff has modified this
20 section to provide that a request for reconsideration
21 will be deemed automatically stayed for 30 days,
22 thereby giving the Commission 60 days to take action
23 on the request.

24 Staff recommends that the Commission approve
25 staff's proposed regulatory text, section 1188.4, as
26 modified after the close of the public-comment period,
27 and authorize staff to make any technical,
28 nonsubstantive edits to the proposed text resulting

1 from the Commission's actions.

2 If the Commission approves staff's proposed
3 modifications, the modified text of section 1188.4
4 will be released for an additional 15-day public-
5 comment period. Thereafter staff will prepare the
6 final proposed text of section 1188.4 and present this
7 text to the Commission in October for adoption.

8 CHAIR PORINI: All right, do we have any
9 comments from anyone in our audience?

10 Questions or comments from members?

11 Do I have a motion?

12 MEMBER SHERWOOD: Move for approval of
13 staff's recommendation.

14 MEMBER HALSEY: Second.

15 CHAIR PORINI: We have a motion and a second
16 that we approve staff's recommendation.

17 Is there any further discussion?

18 Okay, all those in favor, indicate with
19 "aye."

20 *(A chorus of "ayes" was heard.)*

21 CHAIR PORINI: Opposed?

22 Okay, thank you.

23 MS. HIGASHI: The last item, Item 20, I'll
24 make it very quick. We've given you a display of what
25 our workload statistics look like. We have added the
26 column for 1999, just to give you a comparison,
27 especially it's probably most dramatic when you look
28 at Roman I, number 9 on the incorrect reduction

1 claims.

2 In my report, I've detailed a couple of the
3 IRCs which settlements have been reached. And I'd
4 particularly like to point out that on the Handicapped
5 and Disabled Students IRC, this is the first case in
6 which the Commission authorized a Commission member,
7 Mr. Beltrami, to actually act as a facilitator in the
8 meeting with the parties. That case is settled.

9 Additionally, the Commission staff held
10 informal conferences with the State Controller's
11 office and the claimants for a number of claims filed
12 under the Removal of Chemicals test claim. Those
13 claims have also been withdrawn because of
14 settlements.

15 Ironically, those claims involved issues
16 regarding which hazardous chemicals -- removal of
17 which hazardous chemicals could be reimbursed. So it
18 was initiated -- I was waiting to see if Mr. Petersen
19 would come up to the table, since he is quite familiar
20 with some of those issues. But the Controller's
21 office recently resolved those.

22 The legislative process, you know, is still
23 continuing. We have a few more days left. I don't
24 have any new information to report to you regarding
25 the Aroner bill or the Bock bill that are detailed
26 below, unless someone else has read press releases
27 today that I haven't gotten to.

28 Regarding staffing, you've met our new

1 staff. And with our new staff will also come more
2 agenda items in the future. So we're hoping that --

3 MEMBER STEINMEIER: Does this mean bigger
4 boxes to lug, is that what you mean?

5 MS. HIGASHI: It might mean bigger boxes.
6 We'll see. And for staff, as well as for you,
7 sometimes until we really get into the test claim and
8 read all of the filings, the drafts go out, the
9 comments come in, we don't always know what we're
10 going to find when we open the binders. And we will
11 continue working to schedule manageable agendas, and
12 to let you know as far in advance as we can if we have
13 some major heavy binders coming your way, so you can
14 schedule your time accordingly.

15 CHAIR PORINI: I would like to compliment
16 staff. I think that we have done a great job in this
17 last year of trying to work through a backlog that we
18 had. I'm sure our claimant community feels the same
19 way. I know some of the claims have sat for some
20 time. And I think that it's a great job that we've
21 done to try to work through those.

22 MS. HIGASHI: On behalf of staff, I'd like
23 to thank you very much.

24 And we're also pleased at the number of
25 items that the Commission has adopted, instead of a
26 number of items being continued for several months.

27 Regarding the future agendas, we have given
28 you a snapshot of the October hearing agenda.

1 Item 2, under the test claim section, Animal
2 Adoption, Statistics, it's expected to be a very
3 interesting hearing with a number of participants,
4 interested parties. We held a prehearing conference
5 yesterday with claimants' representatives, the
6 Attorney General's office representing Finance, and
7 also with the representative from the Controller's
8 office. We are doing our best to organize that
9 hearing in such a manner that the testimony will be
10 orderly, and that there will be time limits
11 established. And we will give you that information
12 before the hearing.

13 But it's concerning legislation that has --
14 that was controversial at the time of enactment, and
15 there's still a number of interested persons following
16 it, and certainly through the mandates process.

17 We have Proposed Parameters and Guidelines
18 amendments for the Open Meetings Act. And it's my
19 understanding that we actually have various agreements
20 worked out on unit-cost approaches, so that the
21 incorrect reduction claim workload would not continue
22 in the same way as it has in the past.

23 And we also have Proposed Parameters and
24 Guidelines for School Site Councils.

25 We have an incorrect reduction claim of
26 Collective Bargaining; and potentially, we have
27 another related -- a test claim on a related subject,
28 Employee Benefits Disclosure. But I understand that a

1 request for postponement is going to be filed on that
2 one.

3 We have two statewide cost estimates. One
4 on School Bus Safety, which you heard about today; and
5 the other on Annual Parent Notification, which is the
6 annual update statewide cost estimate.

7 CHAIR PORINI: Questions or comments from
8 members?

9 Okay, then that takes us to the point in our
10 agenda where we ask for public comment.

11 Is there anyone who wants to come forward?

12 MR. PETERSEN: Keith Petersen, representing
13 Alameda County Offices of Education, and also in my
14 capacity as special counsel to the Education Mandated
15 Cost Network.

16 At the July hearing, the Commission adopted
17 a decision which denied reimbursement for the Gann
18 limit calculation test claim. According to
19 regulations, I've filed on behalf of Alameda County on
20 August 9th, a request for reconsideration. On August
21 30th I received a memo from the Commission staff,
22 indicating that the 30-day period for which the
23 Commission had time to act had passed. No action had
24 been taken, therefore, there's no jurisdiction
25 remaining over the request for reconsideration.

26 And I'm here today just to ask what happened
27 during that period, so that if the matter comes up
28 again in the future, we can take some steps to see

1 that it doesn't happen again, and whether this is
2 actually a viable remedy or whether this is something
3 that may occur again.

4 CHAIR PORINI: All right, does staff wish to
5 comment?

6 MS. HART-JORGENSEN: The rulemaking package
7 today was in response to what happened. Under AB
8 1639, the provisions for consideration were changed.
9 It provided that a request for reconsideration shall
10 be submitted with the Commission within 30 days after
11 the decision has been rendered. Within that code
12 section, it provides that, if during that time period,
13 that the Commission grants a stay or grants an
14 extension of time, it can be extended up to 60 days.
15 The legislation also provides that if there's no
16 action taken within that period, that the petition and
17 the request for reconsideration shall be considered
18 denied.

19 This is a situation where we weren't
20 prepared for it. And we apologize it happened. We
21 weren't -- again, we went through the rulemaking
22 package, the letter came in, we were prepared to
23 answer it. We were getting ready to go through the
24 substantive issues, and looked upon it and saw that
25 the day had passed.

26 Paula and I have taken turns beating each
27 other over -- we've been fighting over who should take
28 the blame. Someone walked by and heard us arguing and

1 said, "Oh, my gosh, what are they arguing about?"

2 If they would have listened, I would have
3 said, "No, Paula, it's my fault." Or, "No, Pat, it's
4 my fault." It happened. We feel -- we're not feeling
5 great about it but what can we do? We can't go back
6 and unring the bell. But we do want to go forward
7 with the proposed amendment to the regulations and
8 also would like to request that the staff has
9 permission to deem a request for reconsideration
10 stayed until 60 days in order to give the opportunity
11 to put it on the agenda.

12 To indicate how it happened, we had it
13 scheduled for this agenda. We got it, we were doing
14 our session to determine what we needed to do. And it
15 happened, and we are working on something proactive to
16 take care of it.

17 We also are internally changing our
18 mail-receipt process. Again, no, we're not going to
19 put blame. Like I said, Paula and I have already beat
20 each other up about who gets to take the blame. Since
21 I'm talking, I guess, I can get up but she can
22 interrupt me and she may try and take it away from me
23 again. But we're working on it, making sure that this
24 doesn't happen again.

25 CHAIR PORINI: Mr. Petersen, have you looked
26 at the proposed reg change? Do you think --

27 MR. PETERSEN: The ones that were adopted
28 today?

1 CHAIR PORINI: Yes.

2 MR. PETERSEN: Yes. I didn't have any
3 comment to the proposed reg, change, which is merely
4 incidental to the issue today, and that was that the
5 claimant requested a reconsideration. And to our
6 understanding, no action was taken where action was
7 required within the 30 days.

8 And apologies notwithstanding, I think
9 outside of government, that's generally considered
10 malpractice, and you have a civil remedy. My client
11 does not have a civil remedy. The opportunity to have
12 the item reconsidered is no longer available. Again,
13 apologies notwithstanding.

14 I don't know if there's anything you can do
15 to resuscitate the matter. The way the statute is
16 written, it's very clear. And I had been in
17 communication with staff by e-mail and by phone at
18 least three times, so it wasn't that they didn't know
19 it was on their desk.

20 CHAIR PORINI: All right. Comments from
21 members?

22 MEMBER STEINMEIER: I have a question.

23 CHAIR PORINI: Ms. Steinmeier?

24 MEMBER STEINMEIER: The reason the way the
25 regulations were written is that by not taking action
26 -- of course, you'd kind of have to consciously not
27 take action, then it just sort of died. Not because
28 you failed to make the time lines.

1 Am I correct, Pat?

2 MS. HART-JORGENSEN: By operation of law, if
3 nothing -- if no action is taken on the request, then
4 it's deemed denied.

5 MEMBER STEINMEIER: Right. What I'm saying
6 is, that you didn't do that deliberately?

7 MS. HART-JORGENSEN: No, no.

8 MEMBER STEINMEIER: So I would like to make
9 a recommendation -- actually, I can just ask, since
10 it's not on the agenda today, we really can't talk
11 about it.

12 CHAIR PORINI: No.

13 MEMBER STEINMEIER: So what I'd like to do
14 is propose to put this on the October agenda and we'll
15 talk about it in greater detail there, only because
16 Mr. Petersen did everything that he was supposed to
17 do. And this doesn't happen very often. I mean,
18 really, you guys don't need to beat yourself up about
19 it. Rarely -- I think in all the time I've been on
20 the Commission, we've never had one of these "drop the
21 ball" between two people and nobody knows what's
22 happening. That doesn't happen here very often.

23 But it isn't the claimant's fault because
24 they followed the rules based on what they thought
25 their expectations were.

26 So, as a member of the Commission, I think
27 we ought to put it on the agenda for October. And
28 let's talk about it in greater detail then.

1 CHAIR PORINI: Joann, may I ask what it is
2 that you're putting on the --

3 MEMBER STEINMEIER: The request for
4 reconsideration.

5 CHAIR PORINI: So you're actually asking --

6 MEMBER STEINMEIER: Yes.

7 CHAIR PORINI: -- that the matter be
8 reconsidered?

9 MEMBER STEINMEIER: Right. Put on the
10 agenda for discussion to reconsider it, yes, Mr.
11 Peterson's request.

12 CHAIR PORINI: All right. So you're putting
13 the motion on for discussion to reconsider? We're not
14 reconsidering the item?

15 MEMBER STEINMEIER: Correct.

16 CHAIR PORINI: All right.

17 MEMBER STEINMEIER: That's my motion today.

18 MS. HIGASHI: The regulations would provide
19 that she can -- any member may request that it be put
20 on the agenda. No motion is required.

21 CHAIR PORINI: Okay, so do I have any
22 further comments?

23 Mr. Robeck?

24 MEMBER ROBECK: What's the effect of your
25 motion, if we notice that we're going to discuss
26 reconsideration? Are we discussing the merits of the
27 case --

28 MEMBER STEINMEIER: No.

1 MEMBER ROBECK: -- or are we discussing --
2 CHAIR PORINI: No.
3 MEMBER ROBECK: -- just whether or not we
4 can reconsider?
5 MEMBER STEINMEIER: Whether we can
6 reconsider it or not; right. That's my understanding.
7 I think anything else would be inappropriate
8 for me to suggest at this moment in time, because we
9 haven't discussed even to reconsider it yet.
10 CHAIR PORINI: That's right.
11 MEMBER ROBECK: As an addition to that, I'd
12 like, you know, staff to brief us as to our options as
13 part of that process.
14 CHAIR PORINI: All right. So we don't need
15 a motion.
16 Do you have any further comments, Mr.
17 Petersen?
18 MR. PETERSEN: No, I don't.
19 CHAIR PORINI: All right, is there any other
20 public comment?
21 Mr. Burdick?
22 MEMBER STEINMEIER: We're going to have to
23 get him a chair of his own.
24 MR. BURDICK: Madam Chair, Members of the
25 committee; I just want to point out, I think as many
26 of you know, that this is the time of year where we
27 get ready to draft and introduce legislation. And
28 this Commission in the past has not participated in

1 the legislative process or identified things that they
2 either like or not like to do in terms of fixing this
3 process.

4 I would like, today, to request that you
5 reconsider that position of your predecessors; and
6 that you give some thought to things that you would
7 think would make sense and putting some "quasi" back
8 in this process, putting some reasonableness into this
9 process.

10 Again, I think we've all been frustrated at
11 times -- those that have been around -- about some of
12 the decisions or some of the law. Today the CSAC
13 League of Cities Advisory Committee on State Mandates
14 is going to be looking at about 25 specific proposals
15 for changes to the process. I would think that it
16 would be nice to find out from the Commission very
17 often if there's some things that you would like to
18 do.

19 As I commented on earlier today, I remember
20 that when Chairperson Terry Parker was there, she was
21 of the mind that she would like to see some more
22 discretion for the Commission. That's one of the
23 reasons we called it a "quasi-administrative process."

24 And so maybe what we need is some statutory authority
25 to allow you to do things, so that a member does not
26 feel precluded from doing what they think should be
27 done under the Constitution or what should be done,
28 which is right when this process -- you know, under

1 this process.

2 So I don't know whether it's appropriate --
3 or maybe I could urge if any member so felt that this
4 was a reasonable request, to list this for a possible
5 item of discussion or whether there's something you
6 can do in your executive session. But I would like
7 you to consider whether or not we could get some
8 additional input from the Commission from you on
9 things that might be improvements to the process and
10 to your authority.

11 You are the exclusive body which has been
12 designated to determine what is and what is not a
13 reimbursable state mandate. And I think particularly
14 four of you had considerable experience, one absent
15 today. Hopefully Members Halsey and Lazar now have
16 been through several meetings, and Mr. Robeck,
17 hopefully, will continue to be with us in this
18 process.

19 MEMBER STEINMEIER: Maybe after today, maybe
20 not.

21 MR. BURDICK: But, anyway, that's my purpose
22 for public comment to see -- I don't know whether you
23 want to consider it or not, but I put that on as
24 comment for the members to consider. But I do think
25 -- I know there are other commissions that do get
26 involved in the legislative process, it is my
27 understanding, and at least talk about things that
28 they think need to be changed or not changed in terms

1 of statutes.

2 And I would welcome -- I think, the local
3 government would probably welcome some things that you
4 think might improve the process. And we'd be happy to
5 then discuss them with folks as to whether or not we
6 can agree or not. But I think the time has come to
7 get some involvement and some direction from the
8 members of the Commission.

9 CHAIR PORINI: Mr. Robeck?

10 MEMBER ROBECK: It's not an executive
11 session item. It's a public session item. And there
12 are really two issues involved: One is, could we, as
13 commissioners, get together on any piece of
14 legislation and support it with reference to our
15 respective bosses, whether or not that would work; and
16 the second is, what would we do in terms of staffing
17 that kind of issue, and whether or not that would be
18 something that would be either inappropriate or an
19 inordinate burden on the existing staff resources to
20 make manifest any support or opposition we expressed.

21 So I think it would have to be a public
22 session item put on the agenda for next week, and I so
23 request that.

24 CHAIR PORINI: Not next week, though.

25 MS. HIGASHI: Next month.

26 MEMBER ROBECK: Next month?

27 MS. HIGASHI: Thank you.

28 CHAIR PORINI: All right. Thank you.

1 Is there any further public comment?

2 Mr. Kaye?

3 MR. KAYE: Leonard Kaye, County of Los
4 Angeles.

5 I really don't want to take up too much of
6 your time, compared to the monumental issues you've
7 been talking about. I just want to technically
8 correct one thing. The matter I believe that you'll
9 be hearing next week -- next month, excuse me -- on
10 the County of Los Angeles, et al., and all their
11 claimants, it's been referred to by Paula Higashi, I'm
12 sure, accidentally, as Animal Adoption, Statistics.
13 We submitted our test claim on Animal Adoption.

14 And the reason why this is an important
15 clarification is, you might be anticipating a great
16 statistical analysis. Trust me, we're not
17 statisticians. This is going to be a very incidental
18 part of the claim, which we'll dwell on other matters.

19 Thank you.

20 CHAIR PORINI: Thank you for the
21 clarification.

22 All right, any further comments?

23 And with that, we are going to adjourn into
24 closed executive session. The Commission will meet
25 pursuant to Government Code section 11126(e), to
26 confer with and receive advice from legal counsel for
27 consideration and action, as necessary and
28 appropriate, upon the pending litigation listed on the

1 published notice and agenda; and Government Code
2 section 11126(a) and section 17527, to confer on
3 personnel matters listed on the published notice and
4 agenda.

5 If everyone could please clear the room.

6 *(The Closed Executive Session was held from*
7 *12:23 p.m. to 1:08 p.m.)*

8 CHAIR PORINI: Then I would like to report
9 that the Commission met in closed executive session
10 pursuant to Government Code section 11126(e), to
11 confer with and receive advice from legal counsel for
12 consideration and action, as necessary and
13 appropriate, upon pending litigation listed on the
14 published notice and agenda; and Government Code
15 section 11126(a) and 17527, to confer on personnel
16 matters listed on the published notice and agenda.

17 Is there any further business to come before
18 the Commission?

19 Hearing none, we're adjourned.

20 *(The meeting concluded at 1:08 p.m.)*

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 2nd day of October 2000.

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR